Supreme Court, U. S.
FILED
JAN 5 1977
MICHAEL RODAK, JR., CLERK

No. 76-934

In the Supreme Court of the United States

OCTOBER TERM, 1976

UNITED STATES OF AMERICA, APPELLANT

v.

CLIFF FINCH, GOVERNOR OF THE STATE OF MISSISSIPPI, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF MISSISSIPPI

JURISDICTIONAL STATEMENT

ROBERT H. BORK,
Solicitor General,
J. STANLEY POTTINGER,
Assistant Attorney General,
BRIAN K. LANDSBERG,
JOHN C. HOYLE,
JESSICA DUNSAY SILVER,
Attorneys,
Department of Justice,
Washington, D.C. 20530.

INDEX

	Page
Opinions below	1
Jurisdiction	1
Constitutional provisions and statutes involved	2
Questions presented	3
Statement	4
A. Procedural history	5
B. The District Court's plans	12
C. Requests for special elections	14
D. Requests for modifications	16
The questions are substantial	16
Conclusion	29
Appendix A	1a
Appendix B	39a
Appendix C	75a
Appendix D	93a
Appendix E	115a
Appendix F	121a
Appendix G	125a

CITATIONS

Cases:

Beer v. *United States*, 425 U.S. 130	11, 19
Burns v. *Richardson*, 384 U.S. 73	18
Chapman v. *Meier*, 420 U.S. 1	21, 22
Connor v. *Coleman*, 425 U.S. 675	4, 7, 12
Connor v. *Johnson*, 256 F. Supp. 962	5
Connor v. *Johnson*, 265 F. Supp. 492	5
Connor v. *Johnson*, 330 F. Supp. 506	5
Connor v. *Johnson*, 330 F. Supp. 521	6

Cases—Continued Page
Connor v. *Johnson*, 402 U.S. 690 ..... 4, 6
Connor v. *Waller*, 396 F. Supp. 1308 7
Connor v. *Waller*, 421 U.S. 656 ..... 2, 4, 7, 8
Connor v. *Williams*, 404 U.S. 549 ..... 2, 4, 6, 7, 11
East Carroll Parish School Board v. *Marshall*, 424 U.S 636 22
Fortson v. *Dorsey*, 379 U.S. 433 ..... 11, 18, 22
Kirksey v. *Board of Supervisors of Hinds County*, 402 F. Supp. 658, affirmed, 528 F.2d 536, rehearing granted, May 12, 1976 19
Moore v. *Leflore County Board of Election Commissioners*, 502 F.2d 621 23
Reynolds v. *Sims*, 377 U.S. 533 22
United States v. *Mississippi*, 380 U.S. 128 17
Wallace v. *House*, 515 F.2d 619, vacated, 425 U.S. 947 22
Whitcomb v. *Chavis*, 403 U.S. 124 ..... 18, 22
White v. *Regester*, 412 U.S. 755 ..... 18, 19, 23
Zimmer v. *McKeithen*, 485 F.2d 1297 (en banc), affirmed *sub nom. East Carroll Parish School Board* v. *Marshall*, 424 U.S. 636 23

Constitution, statutes, and rules:
United States Constitution:
Fourteenth Amendment 2, 5, 17
Fifteenth Amendment 3, 5, 17
Mississippi Constitution, Article 13, Section 254 12
42 U.S.C. 1971 (a)(1) 8
42 U.S.C. 1971 (c) 8
Voting Rights Act of 1965, 79 Stat. 437 *et seq.*, as amended, 42 U.S.C. 1973 *et seq.*:

Constitution, statutes, and rules—Continued Page
42 U.S.C. 1973 ---------- 8
42 U.S.C 1973c ---------- 7, 8
42 U.S.C. 1973j (d) ---------- 8
42 U.S.C. 200h–2 ---------- 8
Federal Rules of Civil Procedure, Rule 59 ---------- 10
Miscellaneous:
Hearings before the Subcommittee on Constitutional Rights of the Senate Committee on the Judiciary, on S. 407, S. 903, S. 1297, S. 1409, and S. 1443 (Extension of the Voting Rights Act of 1965), 94th Cong., 1st Sess. (1975) ---------- 23

In the Supreme Court of the United States

OCTOBER TERM, 1976

No.

UNITED STATES OF AMERICA, APPELLANT

v.

CLIFF FINCH, GOVERNOR OF THE STATE OF MISSISSIPPI, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF MISSISSIPPI

JURISDICTIONAL STATEMENT

OPINIONS BELOW

The district court's opinions of August 24, 1976 (App. A, *infra*, pp. 1a–37a), and September 8, 1976 (App. B, *infra*, pp. 39a–73a) are reported at 419 F. Supp. 1072 and 1089. The district court's opinion of November 12, 1976 (App. C, *infra*, pp. 75a–91a), final judgment (App. D, *infra*, pp. 93a–113a), and order amending previous judgment (App. E, *infra*, pp. 115a–119a) are reprinted below.

JURISDICTION

In this reapportionment case, a three-judge district court held that the Mississippi legislature was uncon-

stitutionally apportioned, and extensive litigation followed. The United States intervened as a party plaintiff on June 11, 1975.[1] The final judgment of the district court establishing permanent legislative reapportionment plan for the Mississippi Senate and Mississippi House of Representatives was entered on November 18, 1976, and was amended on December 21, 1976, after consideration of plaintiffs' timely objections and motion to alter or amend judgment. The United States filed its notice of appeal (App. G, *infra*, pp. 125a–126a) on December 28, 1976. The jurisdiction of this Court is invoked under 28 U.S.C. 1253. *Connor* v. *Williams*, 404 U.S. 549; *Connor* v. *Waller*, 421 U.S. 656.[2]

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The Fourteenth Amendment provides in part:

> SECTION 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State de-

[1] See n. 4, *infra*, p. 8.

[2] On December 8, 1976, this Court noted probable jurisdiction in *Connor* v. *Finch*, No. 76–777, an application by the private plaintiffs in this case which the Court, at the suggestion of the United States, treated as an expedited appeal. The Court also ordered that jurisdictional statements in any other appeals from the above judgment be filed by January 5, 1977, that all parties file briefs by February 7, 1977, and responsive briefs by February 21, 1977, and set oral argument for February 28, 1977.

prive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

* * * * *

SECTION 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

The Fifteenth Amendment provides:

SECTION 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.

SECTION 2. The Congress shall have power to enforce this article by appropriate legislation.

Pertinent provisions of the applicable statutes appear in Appendix F, *infra,* pp. 121a–123a.

QUESTIONS PRESENTED

1. Whether the district court's final plan reapportioning the Mississippi legislature improperly dilutes the voting strength of black citizens in certain districts.

2. Whether special elections are required for the 1977 legislature in districts of the Mississippi legislature in which the final reapportionment plan ordered by the district court to be effective in 1979 will substantially remedy the dilution of the voting rights of black citizens occurring in those districts under preceding apportionment plans.

STATEMENT

This case involves the reapportionment of the Mississippi legislature. It is before the Court for the fifth time,[3] following a hearing pursuant to this Court's direction of May 19, 1976, in *Connor* v. *Coleman*, 425 U.S. 675.

The district court held the required hearing on June 15, 1976 (App. A, *infra*, p. 2a). It devised a new plan for the Senate on August 24, 1976 (App. A, *infra*, pp. 16a–24a), and for the House of Representatives on September 8, 1976 (App. B, *infra*, pp. 42a–65a). The district court entered its final judgment (revising its August and September plans in some districts) on November 18, 1976 (App. D, *infra*, pp. 93a–113a). The plans were further revised by an order amending final judgment entered on December 21, 1976 (App. E, infra, pp. 115a–119a).

The 1976 plan is not effective until the legislative elections of 1979. It establishes single-member districts for both the House and Senate. In the meantime the Mississippi legislature elected under temporary plans adopted in previous litigation, which provided for multi-member districts, continues to sit; its next session begins January 4, 1977. The district court, however, ordered special elections in only two of Mississippi's 122 House districts and none for any of the 52 Senate districts. Furthermore, the court

---

[3] See *Connor* v. *Johnson*, 402 U.S. 690; *Connor* v. *Williams*, 404 U.S. 549; *Connor* v. *Waller*, 421 U.S. 656; *Connor* v. *Coleman*, 425 U.S. 675.

"refrain[ed] from setting dates for special legislative elections [for the two House districts] until time for an appeal has expired or until the Supreme Court shall have decided an appeal on the merits" (App. C, *infra*, p. 89a).

A. PROCEDURAL HISTORY

The Mississippi legislature consists of a 52-member Senate and 122-member House of Representatives. In 1965 private plaintiffs filed this suit alleging that the apportionment of the legislature violated the Fourteenth and Fifteenth Amendments. In July 1966, the three-judge district court invalidated the 1962 apportionment of the legislature. *Connor* v. *Johnson*, 256 F. Supp. 962. That same year, the legislature enacted a new plan, and on March 3, 1967, the court held that plan unconstitutional and reapportioned the Senate and House of Representatives for the 1967 elections. 265 F. Supp. 492.

In 1971, the State enacted another reapportionment plan. That plan was held unconstitutional on May 18, 1971, and the district court formulated a plan to govern the 1971 elections. 330 F. Supp. 506. Most of the House districts and almost half of the Senate districts were constituted as multi-member districts.

The 1971 court-formulated plan was not final with respect to three counties: Hinds, Harrison, and Jackson. *Id.* at 519. Those counties accounted for one-fifth of the seats in both houses of the legislature. Although the district court expressed reservations concerning multi-member districts in those counties, each of which would elect four or more senators or repre-

sentatives, it concluded that there was not sufficient time before the 1971 elections to subdivide the three counties into single-member districts. *Ibid.* The court stated that it expected to appoint a special master to determine whether such subdivision would be feasible for the 1975 and 1979 elections. *Ibid.*

On plaintiffs' motion, this Court stayed the district court's judgment until June 14, 1971. *Connor* v. *Johnson,* 402 U.S. 690. It directed the district court "absent insurmountable difficulties, to devise and put into effect a single-member district plan for Hinds County by that date." *Id.* at 692. The district court did not divide Hinds County into single-member districts, however, because it found that there were insurmountable difficulties. *Connor* v. *Johnson,* 330 F. Supp. 521.

After the 1971 elections, this Court considered on direct appeal plaintiffs' challenge to the 1971 court-formulated reapportionment plan. *Connor* v. *Williams,* 404 U.S. 549. Noting, with approval, that the district court had retained jurisdiction over plans for Hinds, Harrison and Jackson Counties and had stated that a special master would be appointed in January 1972 to consider subdividing those counties into single-member districts, this Court directed that "[s]uch proceedings should go forward and be promptly concluded." *Id.* at 551. This Court declined to consider the prospective validity of the 1971 plan until proceedings were completed in the district court and a final judgment was entered respecting the entire state. *Id.* at 551–552. Without disturbing the 1971

elections, this Court vacated the district court's judgment and remanded the case for proceedings consistent with its opinion. *Id.* at 552. The district court did not appoint a special master. *Connor* v. *Coleman,* 425 U.S. 675, 676.

In April 1973 the Mississippi legislature adopted a reapportionment plan. *Connor* v. *Waller,* 396 F. Supp. 1308, 1310. Plaintiffs filed timely objections to the 1973 plan and requested a hearing. *Ibid.;* Pet. App. No. 75–1184, p. 76a. The hearing was held in February 1975. 396 F. Supp. at 1310. After the hearing, the state, in April 1975, adopted new legislation, *id:* at 1311, differing from the 1971 court-formulated plan only with respect to Harrison, Hinds and Jackson Counties. Despite the changes, these counties remained multi-member districts. The district court then dismissed plaintiffs' complaint and directed the filing of an amended complaint addressing the 1975 legislation. *Id.* at 1311. Plaintiffs promptly filed an amended complaint, and in May 1975 the district court entered judgment approving the 1975 legislative plan. *Connor* v. *Waller,* 396 F. Supp. 1308.

On June 5, 1975, this Court reversed that judgment. *Connor* v. *Waller,* 421 U.S. 656. It held that the 1975 legislative acts would not be effective as laws until they were cleared in accord with Section 5 of the Voting Rights Act of 1965, 79 Stat. 439, as amended, 42 U.S.C. 1973c, and that the district court erred in deciding constitutional challenges to the acts based upon claims of racial discrimination. The reversal of the

district court decision was, however (421 U.S. at 656–657):

> without prejudice to the authority of the District Court, if it should become appropriate, to entertain a proceeding to require the conduct of the 1975 elections pursuant to a court-ordered reapportionment plan that complies with this Court's decisions in *Mahan* v. *Howell*, 410 U.S. 315 (1973); *Connor* v. *Williams*, 404 U.S. 549 (1972); and *Chapman* v. *Meier*, 420 U.S. 1 (1975).

On June 9, 1975, Mississippi submitted the 1975 acts to the Attorney General for his consideration under Section 5. The Attorney General, on June 10, 1975, interposed an objection to the bills on the ground that Mississippi had failed to show that they did not have the purpose and would not have the effect of denying or abridging the right to vote on account of race (Pet. No. 75–1184, p. 6, n. 1.).

The United States was permitted to intervene as a party plaintiff on June 11, 1975.[4] The district court then held a hearing on June 20, 1975, to determine under what plan the 1975 elections should be held (Pet. App. No. 75–1184, p. 84a). The original plaintiffs and the United States objected to the composition of certain legislative districts as drawn in the 1971 court plan and the 1975 legislative plan on the ground that those districts unconstitutionally diluted black voting strength. The original plaintiffs also objected to the

[4] The government's complaint in intervention invoked 42 U.S.C. 1971 (a) (1) and (c), 1973, 1973c, 1973j (d), and 2000h–2.

inclusion of multi-member districts in a court-fashioned plan and to malapportioned districts.

In an order dated June 25, 1975, the district court advised the parties that it intended to formulate a "temporary plan for election of Senators and Representatives for 1975 elections ONLY," finding that there was insufficient time to formulate a final plan prior to the August 1975 primaries (Pet. App. No. 75-1184, pp. 84a-85a). The court stated, however, that it intended without unnecessary delay to formulate a permanent plan for the election of legislators in the quadrennial elections of 1979. When that shall have "been accomplished, special elections may be ordered in those legislative districts where required by law, equity, or the Constitution of the United States" (*id.* at 85a).

The court also requested that the parties amplify their objections to the existing plans before it implemented a temporary plan (Pet. App. No. 75-1184, p. 84a). After the parties did so, the court, by orders dated July 8, 1975, and July 11, 1975, formulated the temporary plan (Pet. App. No. 75-1184, pp. 26a-54a). The court also ordered the parties to file alternative plans for the permanent reapportionment of the state legislature (Pet. App. No. 75-1184, pp. 52a-53a).

The temporary plan (Pet. App. No. 75-1184, pp. 26a-54a) was similar to the 1971 court-ordered plan—vacated by this Court so that a permanent plan could be formulated—and to the 1975 legislative plan—objected to by the Attorney General under Section 5. The plan for the Senate contained 14 multi-member

districts, electing 53.85 percent of the Senate membership (28 of 52 senators). Pet. App. No. 75–1184, pp. 46a–47a. For the House 42 of 84 districts were multi-member, electing 72.13 percent of the House membership (88 of the 122 representatives). Pet. App. No. 75–1184, pp. 48a–52a. Five of the Senate districts, electing 8 of 52 senators, had black voting age population majorities. In the House, 12 of the 84 districts, electing 20 of the 122 representatives, had black voting age majorities. Of these districts, 2 in the Senate and 2 in the House had black voting age population majorities of less than 52 percent.

The original plaintiffs, on July 21, 1975, and the United States, on July 24, 1975, filed motions to alter or amend judgment, pursuant to Rule 59, Fed. R. Civ. P. (Pet. App. No. 75–1184, pp. 6a–7a, 8a–23a). Both motions requested that the district court establish a specific date by which a permanent plan would be established and a definite schedule for special elections. Private plaintiffs asked the district court to order into effect a permanent plan by February 1, 1976, and to order such special elections as are necessary to cure defects in the temporary plans, such elections to coincide with the November 1976 presidential elections. As grounds for those motions, the plaintiffs detailed the legal deficiencies they found in the temporary plan.

By order of August 1, 1975, the district court ruled on plaintiffs' motions (Pet. App. No. 75–1184, pp. 4a–5a). While declining to establish a deadline for approval of a final plan, the court emphasized "its firm determination to have this matter out of the way

before February 1, 1976," and its expectation that it would "direct that [any required special elections] shall be held in conjunction with the 1976 Presidential election so as to save the expense of special elections, as far as possible." *Ibid.*

In light of the proximity of the August 12 primary elections, the district court's indication that it intended to take prompt action on formulation of a final plan and scheduling of special elections, if necessary, and this Court's prior indication, in *Connor* v. *Williams, supra,* that it wished to rule only on a final plan, the United States did not appeal from the district court's order establishing a temporary plan.

In October 1975, private plaintiffs and the United States submitted proposals for a final plan (Pet. App. No. 75–1184, pp. 89a–90a). On October 24, 1975, the district court ordered the United States to compile and submit to the court data respecting the November elections (Pet. App. No. 75–1184, pp. 89a–90a). When those data were compiled, the United States moved, on January 26, 1976, to establish February 10, 1976, as the date for a hearing on the proposed permanent plan (Pet. App. No. 75–1184, p. 3a). The court, on January 29, 1976, denied the motion, deferring further hearing and decision until this Court ruled in three then-pending cases.[5] Pet. App. No. 75–1184, pp. 1a–2a.

---

[5] *United Jewish Organizations of Williamsburgh, Inc.* v. *Carey*, No. 75–104, certiorari granted, November 11, 1975, argued October 6, 1976; *Beer* v. *United States*, 425 U.S. 130; *East Carroll Parish School Board* v. *Marshall*, 424 U.S. 636.

Thereafter, plaintiffs sought a writ of mandamus to vacate the district court's stay order of January 29, 1976, and to compel the district court to formulate promptly a reapportionment plan and to order necessary special elections to coincide with the November 1976 presidential and congressional elections. Finding no justification for the district court's delaying further a final decision in this case, this Court instructed the district court to proceed to trial forthwith, to schedule a hearing within 30 days on all proposed permanent reapportionment plans, so that a permanent plan could be effective for the 1979 elections, and to order any necessary special elections to coincide with the November 1976 elections or "at the earliest practicable date thereafter." *Connor* v. *Coleman*, 425 U.S. 675, 679.

B. THE DISTRICT COURT'S PLANS

The district court held the required hearing, and on August 24, 1976, announced its decision setting forth the criteria it would apply and reapportioning the Senate (App. A, *infra*, pp. 1a–37a).[6]

The court concluded that it would prescribe a reapportionment based on single-member districts. As a result, because of demographic factors, it could not assign one House member to each county, as provided in Article 13, Section 254, Mississippi Constitution, or adhere to the State's traditional policy of apportioning Senate seats within districts based on counties

[6] In formulating its plans, the court was assisted by reports from two special masters (App. A, *infra*, p. 3a).

as a whole. The court endeavored, however, to conform its plan to state policy as closely as possible, by defining districts by counties or, where necessary, counties plus "beats" (the five county-supervisor election districts in each county) and voting precincts from other counties. The court relied upon population figures from the 1970 census.[7] In dealing with possible dilution of black voting strength, it also relied upon general population data, rather than data showing comparative black and white voting age population (App. A, *infra,* pp. 34a–35a; App. B, *infra,* pp. 69a–70a; App. C, *infra,* pp. 83a–87a).

Population variances were to be "as near *de minimis* as possible" in light of the problems encountered in trying to devise districts of equal population which also conform to county, beat and precinct lines (App. A, *infra,* p. 14a). The court stated that it would not depart from those guidelines except where necessary "to attain reasonable contiguity, a tolerable equality of population, or an acceptable degree of compactness" (*id.* at 13a).

With respect to dilution of black voting strength, the court stated (*id.* at 13a–14a):

> There shall be no minimization or cancellation of black voting strength. Any apparent dilution in any particular locality will occur only when dictated by the necessity for drawing district lines so as to adhere as closely as reason-

[7] In 1970 Mississippi's population was 2,216,912; the population average for a Senate seat was thus 42,633, and for a House seat 18,171. However, 38 counties had fewer than 18,171 people (App. A, *infra,* pp. 3a–4a).

226-362 O - 76 - 2

ably possible to the population norm while maintaining contiguity and a reasonable degree of compactness.

Applying these guidelines, the district court's final judgment reapportions the State into 122 single-member districts for the House and 52 single-member districts for the Senate (App. D, *infra*, pp. 93a–113a). In the Senate, eight districts have black voting age population majorities, of which four have black majorities of 54 percent or more. Twenty-five of the House districts have black voting age population majorities, seventeen of which exceed 54 percent.

C. REQUESTS FOR SPECIAL ELECTIONS

Following announcement of the Senate plan the United States requested special elections in eight [8] and the original plaintiffs in thirteen [9] Senate districts. Following announcement of the House plan, the United States requested special elections in 27 [10] and the plaintiffs in 41 [11] House districts. Defendants con-

[8] Initially the United States requested special elections in 14 Senate districts, but later amended that request to call for special elections in the following eight districts: 14, 15, 16, 17, 28, 29, 38, and 39.

[9] The Senate districts for which plaintiffs requested special elections were: 12, 13, 14, 15, 16, 17, 28, 29, 38, 39, 41, 42, and 43.

[10] The House districts in which the United States requested special elections are: 3, 8, 10, 15, 16, 17, 22, 24, 25, 26, 32, 33, 34, 37, 38, 47, 52, 56, 57, 79, 81, 82, 89, 97, 103, 105, and 115. Initially, the United States also sought a special election for districts 48 and 49, but it later withdrew that request.

[11] The House districts in which the plaintiffs sought special elections are: 3, 4, 6, 8, 10, 11, 15, 16, 17, 20, 22, 24, 25, 26, 27, 30, 32, 33, 34, 37, 38, 44, 47, 52, 53, 54, 56, 74, 75, 79, 81, 83, 88, 89, 93, 95, 97, 98, 99, 113, and 115.

tended that no special elections were required for either chamber.

The court ruled (App. C, *infra*, pp. 79a–80a) that "the only available thesis for ordering special elections in any of the newly formulated legislative districts would be where required to remedy any impermissible dilution of black voting strength in the temporary plan when compared with the permanent plan established for the 1979 elections." The court declined to order any special elections for the Senate because every newly created senatorial district "with a black population majority was part of a black majority district in 1975" (*id.* at 83a). For the House, the court ordered special elections in only two districts—79 and 97 (*id.* at 84a–85a, 87a). The court rejected special elections in other House districts requested by plaintiffs and the United States because (1) the new districts had black population majorities under the temporary plan used for the 1975 elections; (2) special elections in a newly created black population majority district would necessitate special elections in other districts because their representation would be affected; or (3) in the case of district 3, a white candidate received more votes than a black candidate in the 1975 election in the precincts included within the new district (*id.* at 83a–88a).

The court declined to set "dates for special legislative elections until time for an appeal has expired or until the Supreme Court shall have decided an appeal on the merits" due to the possibility that this Court

might later disapprove the reapportionment plan (*id.* at 89a).

D. REQUESTS FOR MODIFICATIONS

Plaintiffs and the United States submitted requests for modifications in the announced plans for the Senate and House. Plaintiffs submitted a different plan for the Senate, which would, they alleged, result in less population deviation and racial dilution than the court plan. For the House, plaintiffs requested alterations in 19 districts. The United States objected to 11 Senate districts and 34 House districts as unnecessarily diluting black voting strength.

The court modified only the plan for the House of Representatives, changing 11 districts, to "improve upon discrepancies involving contiguity and population" (App. C, *infra,* p. 76a).

After entry of final judgment embodying the court's determinations (App. D, *infra,* pp. 93a–113a), plaintiffs moved for further amendments. On December 21, 1976, after this Court had noted probable jurisdiction by its order in No. 76–777 dated December 8, 1976, the district court further amended its final judgment to alter two Senate and nine House districts (App. E, *infra,* pp. 115a–119a).[12]

THE QUESTIONS ARE SUBSTANTIAL

1. A. The district court's plan unnecessarily dilutes black voting strength in certain districts. In Missis-

---

[12] Plaintiffs' notice of appeal, filed November 18, 1976, was addressed only to paragraphs 7 and 8 of the judgment (App. D, *infra,* p. 112a), which concern special elections.

sippi, 36.8 percent of the population is black, and 17 of the State's 82 counties have black voting age majorities. Yet from 1900 to 1975, only one black legislator was elected to the State's 122-member House of Representatives, and, since 1900, no black has been elected to the State's 52-member Senate. Between 1900 and 1971, no black had been nominated in a party primary (Tr., May 7, 1975, p. 46). These figures reflect a historic pattern of deliberate exclusion of blacks from the effective exercise of their political rights under the Fourteenth and Fifteenth Amendments. Cf. *United States* v. *Mississippi,* 380 U.S. 128. The Voting Rights Act of 1965 brought to the State's black citizens, for the first time since Reconstruction, the prospect of meaningful participation in the State's affairs (App. C, *infra,* p. 82a).

But the district court's reapportionment plan, by unnecessarily fragmenting substantial concentrations of black voters in certain districts, has improperly diluted black voting strength, thereby greatly reducing the prospect of effective political participation by blacks.

This is so because in Mississippi there is a pattern of bloc voting by race: whites will not vote for black candidates or candidates identified with black interests. In white majority districts, therefore, blacks and their allies cannot be nominated or elected.[13] Thus, to the extent that the district court has unnecessarily

[13] Hearing of May 7, 1975, Depositions of Dr. James W. Loewen (Exh. P-7) at pp. 22–24; of Dr. Gordon G. Henderson (Exh. P-8) at pp. 43, 48, 55; and of Rims Barber (Exh. P-10) at pp. 10, 13.

fragmented concentrations of black electors into white-majority districts, the newly redeemed franchise for blacks is being abridged on account of race.

The district court appears to have concluded that since there is no slating process in Mississippi (*i.e.*, a requirement for nomination through local party machinery), so that blacks are free to run in primary and general elections without party nominations, they have not been denied participation in the political process (App. C, *infra,* p. 81a). This approach is inconsistent both with political reality and with this Court's decisions. The right to stand for office or to vote as an elector is individual and personal. But effective participation in the democratic process depends upon collective political support. Hence this Court has held, in the context of multi-member districting, that an apportionment scheme contravenes constitutional protections if it "designedly or otherwise * * * under the circumstances of a particular case, would operate to minimize or cancel out the voting strength of racial or political elements of the voting population." *Fortson* v. *Dorsey,* 379 U.S. 433, 439; *Burns* v. *Richardson,* 384 U.S. 73, 88; *Whitcomb* v. *Chavis,* 403 U.S. 124, 143; *White* v. *Regester,* 412 U.S. 755, 765. Where, as here, blacks do not have an equal opportunity, with whites, "to participate in the political processes and to elect legislators of their choice," an apportionment scheme which, even through the use of single-member districts, deprives blacks of their normal voting power similarly dilutes black

voting strength. See *White* v. *Regester, supra,* 412 U.S. at 765–766; *Beer* v. *United States,* 425 U.S. 130, 156–157 (Marshall, J., dissenting). But cf. *id.* at 142–143, n. 14 (opinion of the Court).

The district court recognized the likelihood of such dilution in this case, for the court sought to justify any "apparent dilution" of black voting strength on the grounds that it was "dictated by the necessity for drawing district lines so as to adhere as closely as reasonably possible to the population norm while maintaining contiguity and a reasonable degree of compactness" (App. A, *infra,* pp. 13a–14a). Yet the court's plan in some districts unnecessarily fragments black concentrations by forming districts which are not compact at all. For present purposes, we illustrate this with the state senate districts in Hinds County.

Hinds County is the State's most populous county and site of the State's largest city, Jackson. In drawing the five senate districts there (Nos. 31–35), the court below utilized the boundaries of the county's supervisor districts ("beats"), which are themselves currently being challenged on the ground that they dilute black voting strength.[14] Although blacks consti-

[14] The reapportionment was proposed by the Board of Supervisors and approved by the district court in April, 1975. *Kirksey* v. *Board of Supervisors of Hinds County,* 402 F. Supp. 658 (S.D. Miss.). The district court's judgment was affirmed on appeal. 528 F. 2d 536 (C.A. 5). Rehearing *en banc* was ordered and held on September 9, 1976. The *en banc* court has not yet ruled. The United States has participated as *amicus curiae* in all stages of the appeal.

tute 39 percent of the total population and 34 percent of the voting age population of Hinds County and are geographically concentrated in 48 contiguous majority black census enumeration districts in the city of Jackson, none of the five supervisor districts has a black voting age population majority.[15] Because of their minority status and the refusal of whites to vote for black candidates or candidates identified with black interests, blacks are unable to elect such candidates in any district.[16] Moreover, although blacks constitute bare population majorities in two of the five districts, no black has been elected to a political office the jurisdiction of which conforms to supervisor district lines.[17]

Jackson is located in the northeastern area of Hinds County. The plan fragments the black population of that city among all five districts by means of oddly-shaped districts which extend from the far corners of the county and, through the use of long corridors, reach into Jackson. The supervisor districts cannot be described as compact. The asserted rationale for their strange shape is the need to achieve equalization of road mileage, bridges, and land area among the districts, so as to equalize the primary responsibilities of the supervisors—maintenance of roads and bridges.[18] Whatever may be said of that rationale as

---

[15] The record in the *Kirksey* litigation, *supra*, n. 14, was incorporated into the record of this case. *Kirksey* Appendix at 533, 544, 282, 391–392.

[16] *Kirksey* Appendix at 378–379, 372, 322–326, 350–378, 393.

[17] *Id.* at 547. See also *id.* at 543, 547–550, 298–306, 318–319, 309–311.

[18] *Id.* at 536–538.

supporting the use of non-compact districts for election of county supervisors (and we believe it is not justified in Hinds County[19]), it certainly cannot justify the use of such districts for election of state senators, whose responsibilities are neither directly nor primarily related to roads and bridges.

Although several alternative plans[20] were presented to the district court which would have produced more compact, regularly shaped districts without unduly fragmenting black population concentrations, and were consistent with the court's guidelines, the district court did not explain why the more dilutive approach it adopted was necessary.

B. Even though all reapportionment plans must meet constitutional requirements, a "court-ordered plan * * * must be held to higher standards than a State's own plan." *Chapman* v. *Meier*, 420 U.S. 1, 26. In *Chapman* the Court ruled that, although a state-formulated plan which contains population deviations of as much as 9.9 percent does not establish a *prima facie* case of unconstitutionality, 420 U.S. at 23, a court-ordered plan must "achieve the goal of population equality with little more than *de minimis* varia-

[19] The evidence indicated that this rationale for supervisor districting in Hinds County was conceived only recently when blacks began exercising their political rights, that the Board of Supervisors considered it unnecessary to effective county government, that it was not pursued at the Board's suggestion, and that there were other ways to achieve the goal of equalizing the responsibilities of members of the Board. *Kirksey* Deposition of J. L. McGee at 20–21, 58, 17–18, 59–62; *Kirksey* Plaintiffs Exhibit 45.

[20] The district court discussed only two of the plans submitted to it by the parties (App. A, *infra*, p. 12a). Those were discussed only in general terms and not with respect to individual districts.

tion." 420 U.S. at 27. In *East Carroll Parish School Board* v. *Marshall*, 424 U.S. 636, and in *Chapman*, the district court's adoption of a reapportionment plan was held to be an abuse of discretion because it contained multi-member districts, even though this Court has held that such districts are not unconstitutional *per se*. See, *e.g.*, *Fortson* v. *Dorsey*, *supra*.

By analogy, we submit, the court-ordered plan here, even though it utilizes only single-member districts, should have avoided unnecessary dilution of black voting strength—regardless of whether adoption of the same plan by a state legislature would have been unconstitutional. The remedy formulated by the district court should have been designed to achieve full realization of the long-suppressed black voting strength, rather than lend itself unnecessarily to continued dilution of that voting strength through fragmentation of substantial concentrations of black voters into majority-white districts in the context of racial bloc voting shown here (see pp. 17–18, *infra*).[21]

C. The district court erred also in relying upon general population rather than voting age population

[21] Indeed, the deficiencies involved in *Chapman* and *East Carroll Parish*—multi-member districts and failure to achieve population equality—were suspect, even though not necessarily unconstitutional, precisely because of their dilutive effect on the voting strength of distinctive components of the electorate. See *Whitcomb* v. *Chavis*, *supra*, 403 U.S. at 157–160; *Reynolds* v. *Sims*, 377 U.S. 533, 568. See also *Wallace* v. *House*, 425 U.S. 947, in which the Court vacated, for reconsideration in light of *East Carroll*, a court of appeals decision that required district courts, in prescribing their own plans, to accept the proposals of the defendant jurisdiction unless those proposals were unconstitutional. 515 F. 2d 619, 634 (C.A. 5).

to determine the extent of dilution. It appears to have concluded, without explanation, that black voting strength cannot be diluted in a district where blacks have a majority of the total population. (App. B, *infra,* p. 70a).[22] The proper measure of dilution, however, is not general population, but effective access to the political process. *Zimmer* v. *McKeithen,* 485 F. 2d 1297, 1303 (C.A. 5) (*en banc*), affirmed on other grounds *sub nom. East Carroll Parish School Board* v. *Marshall, supra; White* v. *Regester, supra,* 412 U.S. at 769. Thus, the starting point for determining voting strength is voting age population. Using that standard, 25 of the districts in the House plan and eight Senate districts have black majorities.

These, however, must be assessed against Mississippi's historic exclusion of blacks from politics. A plan which produces only slim black majorities in districts of a State where blacks have suffered a long history of discrimination touching their ability to participate in the electoral process "[enhances] the possibility of continued black political impotence." *Moore* v. *Leflore County Board of Election Commissioners,* 502 F. 2d 621, 624 (C.A. 5). The past discrimination discourages present participation. Indeed, only 62.2 percent of blacks of voting age in Mississippi were registered to vote in 1971–1972, as against 71.6 percent of whites.[23]

---

[22] The district court stated that there are 30 districts with black population majorities (App. B, *infra,* p. 70a). Our calculations indicate that there are 28 such districts.

[23] Hearings before the Subcommittee on Constitutional Rights of the Senate Committee on the Judiciary, on S. 407, S. 903, S. 1297, S. 1409, and S. 1443. (Extension of the Voting Rights Act of 1965), 94th Cong., 1st Sess., p. 658 (1975).

And there is uncontradicted evidence in the present case that blacks in Mississippi do not vote when they believe they cannot influence the outcome of an election.[24] For all these reasons, even a slight black voting age population majority is not an effective voting majority in a district. A fifty-four percent majority is the minimum needed to enable Mississippi blacks to elect a candidate of their choice.[25] Measured by that standard blacks would have effective majorities in only four Senate districts and 17 House districts under the district court's plan.[26]

Thus, in terms of both practical effect and legal standards, the district court's plan is defective in certain districts because it unnecessarily dilutes black voting strength.

2. In certain other districts the court's plan substantially remedies past inequities. But the district court should have ordered special elections in districts of the Mississippi legislature for which the final reapportionment plan will remedy dilution

---

[24] Deposition of Dr. Gordon G. Henderson, Ex. P–8, May 7, 1975 hearing, at 49–50; Deposition of Rims Barber, Ex. P-10, May 7, 1975 hearing, at 35.

[25] Testimony of Dr. Gordon G. Henderson at May 7, 1975 hearing, at 174.

[26] It is not clear whether the district court apportioned population among precincts on the basis of the number of registered voters in each precinct (as the court indicated at App. A, *infra*, p. 32a), or on the basis of the number of votes received by the gubernatorial candidates in the August 1975 Democratic Primary (as indicated in the Special Master's December 8, 1975 report, pp. 1–2). We believe that the use of either set of statistics may tend to underrepresent blacks in heavily black precincts since they are registered and vote in proportionately lower numbers than whites.

of the voting rights of black citizens under preceding reapportionment plans. Otherwise the principal remedy adopted by the district court—elimination of multi-member districts—will not be effective before 1979. The long-delayed vindication of fundamental voting rights in this case should not be further postponed. That delay would mean that an improperly constituted legislature would continue to sit and the rights of the state's electorate to constitutional representation would be frustrated until the next quadrennial election. The possibility that prompter vindication of these rights might cause unavoidable, slight disruptions in the orderly conduct of the State's legislative business does not, given the prolonged history of this litigation, justify continuation of the *status quo* in districts where voters have long suffered significant, tangible injury to their voting rights.

Accordingly, the district court should have required special elections in several categories of districts.

First, special elections should be held in those districts which were changed under the final plan from majority white to majority black districts, as determined by voting age population ("VAP"). Applying this criterion,[27] the United States asks that, in addi-

[27] The United States has used in this litigation voting age population statistics based on the 1970 census. These figures differ somewhat from the private plaintiffs' statistics, which are based on projections for 1975 voting age populations. The statistics we cite herein regarding districts in which we urge that special elections be held have been revised to correct minor miscalculations contained in the proposals of the United States for special elections submitted to the district court on September 16 and 28, 1976.

tion to the special elections ordered by the court in House of Representative districts 79 and 97, special elections be held in at least the following House districts: 3,[28] 47,[29] 52,[30] 81.[31] This criterion might also apply to four other districts where the changes are of a lesser magnitude.[32]

Second, considering the uncontradicted evidence of racial bloc voting, special elections should also

---

These statistics were also revised to reflect the populations of the districts as modified by the district court in its order of November 12, 1976, its final judgment, and its order amending judgment of December 21, 1976.

[28] District 3 was changed from a majority white district under the temporary plan to 62.0 percent black voting age population. The district court declined to order special elections because a black candidate running countywide failed to carry a majority in the area which comprises new district 3. This reasoning is not sufficient to refuse to permit voters in the new majority black district—which is not county-wide—to exercise an opportunity to elect the representative of their choice.

[29] New district 47 (61.8 percent black VAP) was carved out of parts of two districts, one of which was 49.6 percent black VAP.

[30] District 52 was changed from majority white VAP to 61.3 percent black VAP.

[31] District 81 (70.4 percent black VAP) was carved out of two districts, one of which was majority white VAP and the other 50.1 percent black VAP.

[32] District 32 was changed from 49.4 percent black to 52.9 percent black VAP, district 33 was changed from 49.4 percent black to 50.8 percent black VAP, district 34 was changed from white majority to 50.2 percent black VAP, and district 89 was changed from majority white VAP to 50.8 percent black VAP.

be held where a significant increase in black voting age population (VAP) in a district, and the change from a multi-member to single-member district, will permit blacks to exert their full and fair impact on the elections. Otherwise, the exaggerated influence of whites in those districts will continue. Under this criterion the United States asks that special elections be held in the following additional House districts: 8,[33] 16,[34] 22,[35] 24,[36] 25,[37] 37,[38] and Senate district 15.[39] This criterion might also apply to two Senate districts where the change is of a lesser magnitude.[40]

There are also districts which, although not warranting special elections themselves under the above

---

[33] District 8 was increased from 57.6 percent black VAP to 67.2 percent.

[34] As altered by the order of December 21, 1976, we believe the black VAP increased from 57.6 percent to 68.5 percent.

[35] District 22 (62.2 percent black VAP) was carved out of two districts having 54.8 percent and 52.9 percent black VAP.

[36] District 24 was increased from 52.9 percent black VAP to 61 percent.

[37] District 25 was increased from 54.8 percent black VAP to 56.8 percent.

[38] District 37 was increased from 50.1 percent black VAP to 63 percent.

[39] District 15 was increased from 53.7 percent black VAP to 57.2 percent.

[40] District 16 was increased from 50.5 percent black VAP to 51.7 percent. District 28 was increased from 54.8 to 56 percent black VAP, under the December 21, 1976 order.

criteria, were previously combined in districts in the temporary plan with a district that does warrant a special election. The district court used this interrelationship as a reason for rejecting special elections in certain districts that would otherwise have required such an election. This complicating factor is not a sufficient reason to refuse to hold special elections where they are needed. Additional special elections caused only by this factor would not harm anyone's rights. They would permit additional voters to be represented by persons selected pursuant to a constitutional plan. Because of this factor, special elections might be held in several other of the districts in which plaintiffs seek special elections (see districts 10, 17, 26, 38, 44, 56, and 88).[41] While we do not disagree with plaintiffs' suggestions for elections in these districts, it would, in our view, be better to allow the district court to select the most appropriate method, in light of the local circumstances, to solve this problem. The district court may also have to consider whether special elections are required where two incumbents are residing in the same new district, and a special election is held in a different new district which was formerly represented by the two incum-

[41] Plaintiffs seek special elections in one additional district. District 27 was a single-member district under the temporary plan, and we did not request a special election for that district in the district court because, in our view, the change did not have a significant impact on black voters.

bents. In such a situation, the number of representatives in the legislature would exceed 122 unless a special election is held in the new district in which the two incumbents live.[42]

The district court has stated in the past that it intended to hold special elections "in time for the person elected to take his seat when the Legislature is convened in regular session in January, 1977" (App. B, *infra*, p. 72a). We believe that, under the criteria outlined above, such elections should now be ordered to be held as promptly as practicable in order to enable the persons elected to occupy their seats during 1977.

CONCLUSION

For the foregoing reasons, the Court should note probable jurisdiction.

Respectfully submitted.

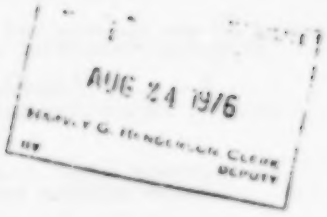
ROBERT H. BORK,
Solicitor General.
J. STANLEY POTTINGER,
Assistant Attorney General.
BRIAN K. LANDSBERG,
JOHN C. HOYLE,
JESSICA DUNSAY SILVER,
Attorneys.

JANUARY 1977.

[42] Plaintiffs have suggested special elections for districts 44 and 88 on that basis.

226-382 O - 76 - 3

APPENDIX A



IN THE UNITED STATES DISTRICT COURT FOR THE

SOUTHERN DISTRICT OF MISSISSIPPI

JACKSON DIVISION

PEGGY J. CONNOR, ET AL.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	
	)	CIVIL ACTION
CLIFF FINCH, ET AL.,	)	
	)	NO. 3830(A)
Defendants,	)	
	)	
and	)	
	)	
UNITED STATES OF AMERICA,	)	
	)	
Plaintiff-Intervenor	)	

Before COLEMAN, Circuit Judge, RUSSELL and COX, District Judges.

COLEMAN, Circuit Judge.

For the 1979 quadrennial Mississippi legislative elections, our task is to reapportion both Houses of the Mississippi Legislature.[1]

I. The Directions of the Supreme Court, May 19, 1976

In an opinion dated May 19, 1976, the Supreme Court held that this task should be performed agreeably to the teachings of Mahan v. Howell,[3] Connor v. Williams,[4] and Chapman v. Meier.[5]

While a writ of mandamus did not issue, the opinion further held that we should enter

> "a final judgment embodying a permanent plan reapportioning the Mississippi Legislature in accordance with law to be applicable to the election of legislators in the 1979 quadrennial elections, and also ordering any necessary special elections to be held to concide with the November 1976 Presidential and Congressional elections, or in any event at the earliest practicable date thereafter."

A hearing was scheduled for Wednesday, June 2. The Department of Justice was unable to appear on that date, so the hearing was rescheduled for, and held on, Tuesday, June 15, 1976.

---

[1] The previously reported decisions in this litigation are:
Connor v. Johnson, 256 F. Supp. 692 (1966); 265 F. Supp. 492 (1967) (not appealed); 330 F. Supp. 506 (1971);
Connor v. Williams, 402 U.S. 690, 91 S.Ct. 1760, 29 L.Ed.2d 268 (1971); 330 F. Supp. 521 (1971); 404 U.S. 549, 92 S.Ct. 656, 30 L.Ed.2d 704 (1972);
Connor v. Waller, 396 F. Supp. 1308; 421 U.S. 656, 95 S.Ct. 2003, 44 L.Ed.2d 486 (1975). District Court citations are for the Southern District of Mississippi.
Connor v. Coleman, —— U.S. ——, 96 S. Ct. 1814, —— L.Ed.2d ——.
The District Court orders of June 25, 1975, July 8, 1975, and July 11, 1975, promulgating a temporary plan for the 1975 legislative elections, are not reported.

[2] Connor v. Coleman, *supra*.

[3] 410 U.S. 315, 93 S.Ct. 979, 35 L.Ed.2d 320 (1973).

[4] 404 U.S. 549, 92 S.Ct. 656, 30 L.Ed.2d 704 (1972).

[5] 420 U.S. 1, 95 S.Ct. 751, 42 L.Ed.2d 766 (1975).

In an effort to expedite the matter as much as possible, William D. Neal, who participated as a special master in the Court ordered reapportionments of 1967 and 1971, was appointed special master, with directions to compile the statistical data necessary to a plan for the fifty-two member State Senate.

Hoyt Holland, heretofore appointed a special master in this litigation, was directed to concentrate his efforts on similar data for the 122 member House of Representatives.

II. The Practical Aspects of the Task

The Mississippi Legislature is composed of 122 Representatives and 52 Senators (Sections 254, 255, Mississippi Constitution). In 1970 Mississippi had a population of 2,216,912. The population norm for a Senate Seat is 42,633; for a House Seat it is 18,171.

The State Constitution, Section 254, directs that "in each apportionment each county shall have not less than one Representative".

Thirty eight of Mississippi's eighty two counties have less than 18,171 people. To give every county one Representative would have the result that

> "population is submerged as the controlling consideration in the apportionment of seats in this particular legislative body [and] the right of all the State's citizens to cast an effective and adequately weighted vote would be unconstitutionally impaired if we were to award one Representative to every county", Reynolds v. Sims, 377 U.S. 533, 84 S.Ct. 1362, 1392, 12 L.Ed.2d 506 (1964).

Within the 122 member limit there is no way by which every county may be assigned one Representative. We are thus forced to abandon this standard.

THE INTEGRITY OF COUNTY BOUNDARIES

Since the admission of Mississippi as the twentieth state in the American Union (1817), the county has been the sole unit of state government. This has been considered to be of such critical importance that Section 260 of the Mississippi Constitution provides that no existing county boundary may

be altered without the consent of a majority of the voters in the affected part of each of the counties involved.

Mississippi has a system of local and private legislation almost identical to that of Virginia, Miss. Const., 1890, Sec. 89; Mahan v. Howell, 410 U.S. 315 (1973).

Counties having more than one Representative may provide for the election of such Representative by dividing such county into districts for the election of Representatives, Miss. Const., Sec. 254.

Each county is divided into five supervisors districts, Miss. Const., Sec. 170. These districts are known as "Beats", from the early days when the county governing board was called "The Police Jury", Miss. Code of 1857, p. 414.

The Board exercises executive and judicial functions, including the valuation of property for taxation, the levy of taxes, the expenditure of public funds, the issuance of bonds, and the management of the public roads. The Constitution requires that these officials be elected from the respective Beats, which means that a voting precinct must be

located entirely within the same Beat. The voting precincts are of various voting strengths, being erected for the general public convenience, consistently with community patterns.

For about 75 years Mississippi has maintained a system of permanent voter registration. Except in the rare event of a total re-registration, once a person registers to vote within the precinct of his residence he need never register again as long as he continues to reside there. Poll lists for use on election day are maintained accordingly.

From the foregoing it inexorably follows that any single member legislative district has to be constructed primarily from counties, using beats and precincts as necessary to approach or attain the required population norm.

FRACTURING COUNTY BOUNDARIES

From the beginning of statehood the Mississippi State Senate has been elected from districts, generally composed of more than one county.

For 159 years, however, no legislative district has been formed by combining fractions of counties (fracturing county boundaries). For detailed history of this situation in Mississippi, see Connor v. Waller, 396 F. Supp. 1314, 1315.

In deference to this undisputed, well defined state policy, to which the voter is thoroughly accustomed, this Court previously has adhered to the principle that in the reapportionment of legislative seats it would not combine subdivisions of different counties; we would not fracture county boundaries. Indeed, such fractionalization, carried very far, would seriously disrupt (and impair) the basic fabric of Mississippi state government.

There is a practical consideration about fractionalizing counties which, so far, the Supreme Court does not seem to have addressed. If a Beat or a precinct in one county is detached for annexation to another county for the election of a Senator or a Representative, the voter residing in the detached area can certainly vote but the vote from a detached area having a small percentage of the total vote, will have very little weight against the "majority bastion" in the other county, certainly so if the

interests of the Balkanized area do not coincide with those of the mass to which it has been attached. Independently of the mathematics demonstrated by mere numbers, dilution of voting strength would, in fact, occur.

The public policy of this State, expressly and repeatedly recognized by state constitutions and statutes, has been to allow multiple member legislative districts, avoiding the fractionalization of counties.

By the use of multiple member districts, without fracturing county boundaries, the Mississippi Legislature could be apportioned in a manner which would comply with one man-one vote principles. We are well aware that the Supreme Court has never yet directed any court to fractionalize counties or to fracture county lines. In Mahan the right to preserve the integrity of county boundaries was recognized. Yet, we have repeatedly been told that in the formulation of a court ordered legislative reapportionment plan single member districts must be used unless multiple member districts can be justified by unusual circumstances, Chapman v. Meier, supra.

There comes a time when stability, the prime requisite of effective government, should be attained. We have decided to divide the State into single member legislative districts in the hope that this long-running controversy may at last be terminated and the stability of the Mississippi Legislature restored.

We do not believe, however, that the Supreme Court intends that we should tear state policies to shreds. Both Mahan and Chapman abound with declarations to the contrary. What we propose to do is to set up single member districts, at the same time preserving as much as possible of the spirit of the rule against breaking counties apart. The policy of having multiple member districts will, of course, have to be ignored.

III. The Means of Accomplishing the Task

Mississippi is divided into 82 counties, 410 Beats, and about 1750 voting precincts. It is not a populous State. A deviation of 1% in the population norm for the election of a Representative involves

only 181 persons. In the Senate 1% amounts to only 426 persons. If we were to ignore the special circumstances of the case and if percentages were allowed to serve as the sole criteria, we are not left much breathing room in undertaking the conversion of a 159 year old system into single member districts. We cannot change the county lines ordained by law. We have not the machinery with which to realign Beat boundaries. We cannot undertake the reconstitution of voting precincts. A statewide re-registration of voters on newly begun permanent registration rolls would be a task to stagger the most resolute. In short, we have had to take the Counties, Beats, and precincts as they actually are - not what we should prefer if we had been handling these matters for the past century and a half. The special circumstances are further complicated by the fact that the Beats in many Counties have been reapportioned since the Census of 1970, so the figures for that year no longer accurately reflect the facts. In such instances, we have recomputed population figures, as of 1970, by the most accurate means available.

We have sought to avoid a reapportionment which would spawn a labyrinthian mishmash of legislative districts, composed of hundreds of Balkanized areas scattered profusely throughout the State. We have sought to avoid reducing the legislative elective process to a hopeless jungle, impairing the meaningful nature of the representational function. This has necessitated greater variances in population percentages in some instances than ordinarily would have been preferred.

Of course, we realize the whole job will be to do over again in light of the 1980 figures and the Court hopes that the reapportionment we are now ordering will provide the foundation for smaller variations when the new figures are known.

THE PLANS

The plaintiffs have proposed two reapportionment plans. One is known as the Valinsky Plan. It has been of no practical use because it is constructed chiefly on population data found in Census Enumeration Districts. These Census Districts do not conform to voting precinct or beat boundaries. Their use would require a massive realignment of voting precincts throughout the State, with consequent re-registration of voters. The Court thinks it should adopt an alternative which would avoid this wholesale confusion, to say nothing of the problem of getting the voters to register anew in the appropriate precinct.

On the other hand, we have adopted portions of the Kirksey Plan because, in the opinion of the Court, they fit the situation better than any others. We have not adopted the Kirksey Plan in toto because its efforts to attain mathematical nicety would irreparably rend the basic fabric of state government in Mississippi.

The plans we now formulate will conform as nearly as possible to the basic concepts of one man-one vote without, at the same time, setting up a veritable Babel of ill defined legislative districts.

THE GUIDELINES

To attain this objective we have developed, and adhere to, the following guidelines:

1. If a county has more than enough population for the election of a Representative or Senator, then there shall be one complete district within that county, thus at least one Senator or Representative will be chosen solely by that county. In practical effect this will largely preserve the integrity of county boundaries and conform, to a degree, with the state policy on that subject, Mahan v. Howell, supra.

2. Except where two or more districts may properly be set up within the same county as authorized by Mississippi Constituion, Section 254, no county will be split into more than two segments.

3. Any departure from these guidelines will be allowed to occur in those rare instances required to attain reasonable contiguity, a tolerable equality of population, or an acceptable degree of compactness.

4. There shall be no minimization or cancellation of black voting strength. Any apparent dilution in any particular locality will occur only when dictated

by the necessity for drawing district lines so as to adhere as closely as reasonably possible to the population norm while maintaining contiguity and a reasonable degree of compactness.

5. The population variances are to be as near de minimis as possible, bearing in mind any existing unusual circumstances and the narrow mathematical restrictions imposed by a single percentage point.

6. Obviously, shifts could be made in some districts to make them more nearly de minimis but the bulge here, or the contraction there, cannot overlook the necessity for fitting one set of 52 blocks (Senate seats) and another set of 122 blocks (House seats) within immovable precinct, beat, county, and state boundaries. Nowhere can a "domino" effect be more quickly encountered.

7. The population figures of the 1970 Census will be used as the basis for this reapportionment. This is the only definite data available. Yet, the Court is well aware of the continuing population shifts in Mississippi. The Census Bureau officially estimates that between 1970 and July 1, 1973 (the latter date being now more than three years past), the population

of DeSoto County increased 28.9%, both Jackson and Rankin Counties increased 18.1%, and so forth. (See Table for the entire State attached to this opinion). We cannot use the 1973 official population estimates because they do not include beats and precincts.

IV. Judgment

It, therefore, is ORDERED, ADJUDGED, and DECREED:

1. The permanent plans for the reapportionment of the Legislature of the State of Mississippi, as hereinafter set forth, shall be in force and effect for the regular quadrennial elections of 1979 and thereafter until altered according to law.

2. Except in those instances in which a special election may hereinafter be ordered, these plans shall not affect the terms of office of legislators elected in 1975.

3. In the event of the death or resignation of a legislator presently in office, the vacancy so created shall be filled by a special election in that

226-362 O - 78 - 4

district promulgated for 1979 in which the legislator shall have resided at the time of such death or resignation.

4. The removal by a legislator of his residence from one place to another within the district for which he was elected in 1975 shall not affect the term of office for which he was elected.

It is further ORDERED, ADJUDGED, and DECREED that the 52 members of the Mississippi State Senate to be chosen in the quadrennial election year of 1979 shall be elected from districts consisting of specified counties, beats, and precincts, as follows:

SENATE DISTRICTS

District Number	Description	Population	Over or under the population norm
1	DeSoto County:		
	Marshall County: Beat 3	40,697	- 4.5
2	Lafayette County:		
	Marshall County: Beats 1, 2, 4, and 5	43,396	+ 1.8
3	The Counties of Benton, Pontotoc, and Union	43,964	+ 3.1
4	The Counties of Alcorn and Tippah	43,031	+ 0.9
5	The Counties of Prentiss and Tishomingo:		
	Itawamba County: Beats 1 and 2	41,811	- 1.9
6	Lee County	46,148	+ 8.2
7	Monroe County:		
	Itawamba County: Beats 3, 4, and 5	44,152	+ 3.6

8	Lowndes County: less Air Base Precinct	44,312	+ 4.0
9	The Counties of Chickasaw and Clay:		
	Lowndes County: Air Base Precinct	41,033	- 3.7
10	The Counties of Choctaw, Montgomery, and Webster:		
	Calhoun County: Beats 1, 2, 4, and 5	43,215	+ 1.4
11	The Counties of Panola and Yalobusha:		
	Calhoun County: Beat 3	41,557	- 2.5
12	The Counties of Tate and Tunica:		
	Quitman County: Beats 1, 2, 3, and 5	43,171	+ 1.3
13	Coahoma County:		
	Quitman County: Beat 4	43,562	+ 2.2
14	Bolivar County: except the Precincts of Shelby and Duncan-Alligator	43,496	+ 2.0

15	Sunflower County: Bolivar County: the Precincts of Shelby and Duncan-Alligator	42,960	+ 0.8
16	Washington County: Beats 1, 3, and 4	42,553	- 0.2
17	Humphreys County: Washington County: Beats 2 and 5	42,629	.0
18	Leflore County	42,111	- 1.2
19	The Counties of Grenada and Tallahatchie	39,192	- 8.1
20	The Counties of Carroll and Leake; Attala County: Beats 1, 2, 3, and 4	42,138	- 1.2
21	The Counties of Neshoba and Winston; Attala County: Beat 5	43,122	+ 1.1
22	The Counties of Noxubee and Oktibbeha	43,040	+ 1.0

23	Kemper County: Lauderdale County: Beats 1 and 3	39,422	- 7.5
24	Clarke County: Beat 4 Lauderdale County: Beats 2, 4, and 5	40,858	- 4.2
25	The Counties of Jasper and Smith: Clarke County: Beats 1, 2, 3, and 5	41,644	- 2.3
26	The Counties of Newton and Scott	40,352	- 5.4
27	Rankin County	43,933	+ 3.0
28	Madison County: Holmes County: Beats 2 and 3 Yazoo County: Beats 2 and 4	45,612	+ 7.0
29	The Counties of Issaquena and Sharkey: Holmes County: Beats 1, 4, and 5 Yazoo County: Beats 1, 3,		

30	Warren County	44,981	+ 5.5
31	Hinds County: Beat 1	42,948	+ 5.7
32	Hinds County: Beat 2	43,061	+ 1.0
33	Hinds County: Beat 3	43,199	+ 1.3
34	Hinds County: Beat 4	43,010	+ 0.9
35	Hinds County: Beat 5	42,755	+ 0.3
36	Simpson County:		
	Copiah County: Beats 1, 2, 4, and 5	39,747	- 6.8
37	The Counties of Claiborne and Lincoln:		
	Copiah County: Beat 3	41,233	- 3.3
38	Jefferson County:		
	Adams County: Beats 1, 2, 4, and 5	39,082	- 8.3
39	The Counties of Amite, Franklin, and Wilkinson:		
	Adams County: Beat 3	40,379	- 5.3

40	Pike County: Walthall County: Beats 1, 2, and 3	40,190	- 5.5
41	The Counties of Lawrence and Marion: Jefferson Davis County: Beat 2 Walthall County: Beats 4 and 5	34,486	- 7.4
42	Covington County: Jefferson Davis County: Beats 1, 3, 4, and 5 Jones County: Beat 5, and the Precincts of County Barn and Ellisville Courthouse	40,794	- 4.3
43	Jones County: Beats 1, 2, 3, and 4, less the Precincts of County Barn and Ellisville Courthouse	40,989	- 3.9
44	Forrest County: Beats 1, 2, and 3; the Precincts of Camp School, Dixie Pine, Hawkins Junior High, Rowan High, William Carey, and McCallum	42,339	- 0.7

45	The Counties of Lamar and Perry: Forrest County: Beat 5 and the Precincts of County A.H.S. and McLaurin Stone County: Beats 1 and 2	43,024	+ 0.9
46	The Counties of George, Greene, and Wayne: Stone County: Beats 3, 4, and 5	42,515	- 0.3
47	The Counties of Hancock and Pearl River	45,189	+ 6.0
48	Harrison County: the City of Gulfport and Precinct 11 in the City of Biloxi	45,208	+ 6.0
49	Harrison County: all of the City of Biloxi except Precinct 11	44,069	+ 3.4
50	Harrison County: all that part outside the Cities of Biloxi and Gulfport	45,305	+ 6.3

51	Jackson County: all that part outside the Cities of Moss Point and Pascagoula plus the Precinct of Bayou Casotte No. 4	44,269	+ 3.8
52	Jackson County: the City of Moss Point; all of the City of Pascagoula except the Precinct of Bayou Casotte No. 4	43,706	+ 2.5

That which appears herein shall constitute the findings of fact and conclusions of law in this case as required by Rule 52(a) of the Federal Rules of Civil Procedure and shall also constitute the judgment of the Court as to the reapportionment of the Mississippi State Senate. This, however, is not a final judgment in this case because the House of Representatives must also be reapportioned so as to comply with the Constitution of the United States. The reapportionment of the House of Representatives will be accomplished in a supplemental decree, to be entered as quickly as the Court can devise a satisfactory plan for the reapportionment of the House of Representatives, continuing jurisdiction of this case being expressly reserved for that purpose.

The parties to this litigation are directed, within fifteen (15) days, to file stipulations with the Court as to those Senatorial Districts in which special elections would be mandated, in their opinion, by the Constitution of the United States.

SO ORDERED, ADJUDGED, and DECREED, this the 13th day of August, 1976.

Jas. P. Coleman
UNITED STATES CIRCUIT JUDGE

CHIEF JUDGE, UNITED STATES DISTRICT COURT

UNITED STATES DISTRICT JUDGE

Population Analysis for the 52 Senatorial Districts
1976 Court Ordered Plan

Dist. No.	Counties and Beats	Population		Over or Under State Norm of 42,633	
		County	District	Amount	%
1	DeSoto-All	35,885			
	Marshall-Beat 3	4,812	40,697	1,936-	4.5-
2	Lafayette-All	24,181			
	Marshall-Beats 1, 2, 4 & 5	19,215	43,396	763+	1.8+
3	Union-All	19,096			
	Pontotoc-All	17,363			
	Benton-All	7,505	43,964	1,331+	3.1+
4	Alcorn-All	27,179			
	Tippah-All	15,852	43,031	398+	.9+
5	Prentiss-All	20,133			
	Tishomingo-All	14,940			
	Itawamba-Beats 1 & 2	6,738	41,811	822-	1.9-
6	Lee-All	46,148	46,148	3,515+	8.2+
7	Monroe-All	34,043			
	Itawamba-Beats 3, 4 & 5	10,109	44,152	1,519+	3.6+
8	Lowndes County, all except Air Base Precinct	44,312	44,312	1,679+	4.0+
9	Clay-All	18,840			
	Chickasaw-All	16,805			
	Lowndes-Air Base Precinct	5,388	41,033	1,600-	3.7-
10	Choctaw-All	8,440			
	Montgomery-All	12,918			
	Webster-All	10,047			
	Calhoun-Beats 1, 2, 4 & 5	11,810	43,215	582+	1.4+
11	Panola-All	26,829			
	Yalobusha-All	11,915			
	Calhoun-Beat 3	2,813	41,557	1,076-	2.5-
12	Tate-All	18,544			
	Tunica-All	11,854			
	Quitman-Beats 1, 2, 3 & 5	12,773	43,171	538+	1.3+

PLAN FOR THE REAPPORTIONMENT OF THE MISSISSIPPI STATE SENATE - Cont'd
AUGUST 1976

Dist. No.	Counties and Beats	Population County	Population District	Over or Under State Norm of 42,633 Amount	%
13	Coahoma-All	40,447			
	Quitman-Beat 4	3,115	43,562	929+	2.2+
14	Bolivar-Beats 1, 2, 4 & 5	39,767			
	Beat 3: Mound Bayou Precinct	3,729	43,496	863+	2.0+
15	Sunflower-All	37,047			
	Bolivar-Beat 3: Shelby & Duncan-Alligator Precincts	5,913	42,960	327+	.8+
16	Washington-All of Beats 1, 3 & 4	42,553	42,553	80-	.2-
17	Washington-All of Beats 2 & 5	28,028			
	Humphreys-All	14,601	42,629	4-	.0-
18	Leflore-All	42,111	42,111	522-	1.2-
19	Grenada-All	19,854			
	Tallahatchie-All	19,338	39,192	3,441-	8.1-
20	Leake-All	17,085			
	Attala-Beats 1, 2, 3 & 4	15,656			
	Carroll-All	9,397	42,138	495-	1.2-
21	Neshoba-All	20,802			
	Winston-All	18,406			
	Attala-Beat 5	3,914	43,122	489+	1.1+
22	Oktibbeha-All	28,752			
	Noxubee-All	14,288	43,040	407+	1.0+
23	Lauderdale-Beats 1 & 3	29,189			
	Kemper-All	10,233	39,422	3,211-	7.5-
24	Lauderdale-Beats 2, 4 & 5	37,898			
	Clarke-Beat 4	2,960	40,858	1,775-	4.2-
25	Jasper-All	15,994			
	Smith-All	13,561			
	Clarke-Beats 1, 2, 3 & 5	12,089	41,644	989-	2.3-
26	Scott-All	21,369			
	Newton-All	18,983	40,352	2,281-	5.4-
27	Rankin-All	43,933	43,933	1,300+	3.0+

PLAN FOR THE REAPPORTIONMENT OF THE MISSISSIPPI STATE SENATE - Cont'd
AUGUST 1976

Dist. No.	Counties and Beats	Population County	Population District	Over or Under State Norm of 42,633 Amount	Over or Under State Norm of 42,633 %
28	Madison-All	29,737			
	Holmes-Beats 2 & 3	10,110			
	Yazoo-Beats 2 & 4	5,765	45,612	2,979+	7.0+
29	Yazoo-Beats 1, 3 & 5	21,539			
	Holmes-Beats 1, 4 & 5	13,010			
	Sharkey-All	8,937			
	Issaquena-All	2,737	46,223	3,590+	8.4+
30	Warren-All	44,981	44,981	2,348+	5.5+
31	Hinds-Beat 1	42,948	42,948	313+	.7+
32	Hinds-Beat 2	43,061	43,061	428+	1.0+
33	Hinds-Beat 3	43,199	43,199	566+	1.3+
34	Hinds-Beat 4	43,010	43,010	377+	.9+
35	Hinds-Beat 5	42,755	42,755	122+	.3+
36	Simpson-All	19,947			
	Copiah-Beats 1, 2, 4 & 5	19,800	39,747	2,886-	6.8-
37	Lincoln-All	26,198			
	Claiborne-All	10,086			
	Copiah-Beat 3	4,949	41,233	1,400-	3.3-
38	Adams-Beats 1, 2, 4 & 5	29,787			
	Jefferson-All	9,295	39,082	3,551-	8.3-
39	Amite-All	13,763			
	Wilkinson-All	11,099			
	Franklin-All	8,011			
	Adams-Beat 3	7,506	40,379	2,254-	5.3-
40	Pike-All	31,756			
	Walthall-Beats 1, 2 & 3	8,534	40,290	2,343-	5.5-
41	Marion-All	22,871			
	Lawrence-All	11,137			
	Walthall-Beats 4 & 5	3,966			
	Jefferson Davis-Beat 2	1,512	39,486	3,147-	7.4-

PLAN FOR THE REAPPORTIONMENT OF THE MISSISSIPPI STATE SENATE - Cont'd
AUGUST 1976

Dist. No.	Counties and Beats	Population County	Population District	Over or Under State Norm of 42,633 Amount	Over or Under State Norm of 42,633 %
42	Jones-Beat 5 (11,272) plus Ellisville Courthouse & County Barn Precincts in Beat 4 (4,096)				
	Covington-All	15,368			
	Jefferson Davis-Beats 1, 3, 4 & 5	14,002			
		11,424	40,794	1,839-	4.3-
43	Jones-Beats 1, 2, 3 & 4 less Ellisville Courthouse & County Barn Precincts	40,989	40,989	1,644-	3.9-
44	Forrest-All of Beats 1, 2 & 3 and Camp School, Dixie Pine, Hawkins Junior High, Rowan High, William Carey & McCallum Precincts in Beat 4	42,339	42,339	294-	.7-
45	Forrest-All of Beat 5 and Forrest County A.H.S. and McLaurin Precincts in Beat 4				
	Lamar-All	15,510			
	Perry-All	15,209			
	Stone-All of Beats 1 & 2	9,065			
		3,240	43,024	391+	.9+
46	Wayne-All	16,650			
	George-All	12,459			
	Greene-All	8,545			
	Stone-All of Beats 3, 4 & 5	4,861	42,515	118-	.3-
47	Pearl River-All	27,802			
	Hancock-All	17,387	45,189	2,556+	6.0+
48	Harrison-City of Gulfport, & Precinct 11 in City of Biloxi	40,791			
		4,417	45,208	2,575+	6.0+
49	Harrison-City of Biloxi: All except that part included in District 48	44,069	44,069	1,436+	3.4+
50	Harrison-All that part lying outside Cities of Biloxi and Gulfport	45,305	45,305	2,672+	6.3+

PLAN FOR THE REAPPORTIONMENT OF THE MISSISSIPPI STATE SENATE - Cont'd
AUGUST 1976

Dist. No.	Counties and Beats	Population County	Population District	Over or Under State Norm of 42,633 Amount	%
51	Jackson-All that part lying outside Cities of Moss Point and Pascagoula plus Bayou Casotte No. 4 Precinct in City of Pascagoula	44,269	44,269	1,636+	3.8+
52	Jackson-The City of Moss Point and the City of Pascagoula, less Bayou Casotte No. 4 Precinct	43,706	43,706	1,073+	2.5+
	TOTALS	2,216,912	2,216,912		

31a

The U. S. Census Bureau does not report population by voting precincts, as it once did. The Court, therefore, has estimated precinct population by factoring the registered voting strength of a precinct against the total population of the Beat in which it is located. Extensive comparison indicates that the precinct population figures thus obtained are substantially accurate.

The Beats in some Counties have been redistricted since 1970. The population figures used for those Beats have generally been taken from the Court orders specifying the population figures.

Three Counties - Hinds, Warren, and Grenada are in the process of having their Beats redistricted. Hinds and Warren are on appeal. As to them we have used the population figures as found by the District Court. Legislative redistricting as to Lowndes County presented a special problem. Beats in Lowndes were redistricted in 1972. There, the District Court found that 4,074 non-residents were enumerated at Columbus Air Force Base in 1970, while 1,670 non-residents were enumerated at Mississippi University

for Women. It reapportioned the five Beats on the basis of a population of 43,956. We have reapportioned on the basis of the total population enumerated by the Census Bureau (49,700).

RACIAL COMPOSITION OF THE VARIOUS SENATORIAL DISTRICTS

District Number	Black Population	District Number	Black Population
1	38.1%	21	28.4%
2	43.1%	22	45.1%
3	20.9%	23	29.4%
4	13.4%	24	37.7%
5	7.4%	25	35.9%
6	20.7%	26	30.3%
7	25.5%	27	28.1%
8	26 %	28	62 %
9	41.5%	29	60.8%
10	31.7%	30	40.8%
11	46 %	31	39 %
12	57.2%	32	54.3%
13	64 %	33	51.2%
14	58.9%	34	28.2%
15	65.1%	35	22.8%
16	57 %	36	39.7%
17	57 %	37	43.9%
18	57.9%	38	54 %
19	51.9%	39	52.7%
20	42.2%	40	42.6%

District Number	Black Population
41	33.8%
42	28.3%
43	30.8%
44	No figures
45	No figures
46	24 %
47	16.7%
48	23.6%
49	18.5%
50	8.7%
51	12.3%
52	20.1%

Mississippi Population Changes, By County, Since the Census of 1970
(U. S. Census Official Estimate)

COUNTY			
Adams	+0.9	Grenada	+1.0
Alcorn	+3.7	Hancock	+5.5
Amite	-4.8	Harrison	+8.3
Attala	+0.3	Hinds	+3.8
Benton	-1.3	Holmes	-2.7
Bolivar	+0.1	Humphreys	-3.4
Calhoun	+3.0	Issaquena	-12.2
Carroll	-0.4	Itawamba	+5.6
Chickasaw	+2.4	Jackson	+18.1
Choctaw	+0.7	Jasper	+0.8
Claiborne	+0.3	Jefferson	-5.3
Clarke	+2.4	Jefferson Davis	-0.1
Clay	+1.6	Jones	+0.7
Coahoma	-4.2	Kemper	-0.6
Copiah	+4.5	Lafayette	+11.1
Covington	+2.7	Lamar	+11.3
DeSoto	+28.9	Lauderdale	+6.3
Forrest	+6.9	Lawrence	+2.6
Franklin	-0.3	Leake	+2.3
George	+6.1	Lee	+5.9
Greene	-0.4	Leflore	-1.5

Lincoln	+2.7	Sharkey	-3.7
Lowndes	+7.6	Simpson	+4.3
Madison	+7.3	Smith	+6.2
Marion	+2.8	Stone	+5.4
Marshall	+11.4	Sunflower	-0.7
Monroe	+2.3	Tallahatchie	-3.8
Montgomery	+2.5	Tate	+9.6
Neshoba	+4.2	Tippah	+8.9
Newton	+2.6	Tishomingo	+6.3
Noxubee	-4.1	Tunica	-5.4
Oktibbeha	+6.9	Union	+6.7
Panola	+2.4	Walthall	-0.8
Pearl River	-0.1	Warren	+2.4
Perry	+3.4	Washington	+0.8
Pike	+4.6	Wayne	+1.9
Pontotoc	+5.6	Webster	+0.9
Prentiss	+2.8	Wilkinson	-3.5
Quitman	-4.4	Winston	+3.1
Rankin	+18.1	Yalobusha	+4.0
Scott	+4.3	Yazoo	-3.0

APPENDIX B

IN THE UNITED STATES DISTRICT COURT FOR THE

SOUTHERN DISTRICT OF MISSISSIPPI

JACKSON DIVISION

SOUTHERN DISTRICT OF MISSISSIPPI
FILED
SEP 8 1976
HARVEY G. HENDERSON CLERK
DEPUTY
BY

PEGGY J. CONNOR, ET AL., Plaintiffs, v. CLIFF FINCH, ET AL., Defendants, and UNITED STATES OF AMERICA, Plaintiff-Intervenor.	)	CIVIL ACTION NO. 3830(A)

Before COLEMAN, Circuit Judge, RUSSELL and COX, District Judges.

PER CURIAM:

Continuing our difficult journey toward a valid reapportionment of the Mississippi Legislature, we now apportion the State of Mississippi into 122 single member districts for the election of members of the State House of Representatives. Our partial decree of August 24, 1976 apportioning the State Senate, including its findings of fact and conclusions of law, is incorporated in and made a part of this decree.

In constructing a system of single member legislative districts, this Court is compelled to ignore the requirements of the Mississippi Constitution that each County shall have one Representative. We are compelled to abandon two 159 year old state policies: (1) multi-member legislative districts and (2) never fracturing county boundaries in the composition of legislative districts. In short, by the erection of single member legislative districts we have revolutionized Mississippi's system of legislative elections. On the other hand, we have striven to preserve county identity as far as reasonably possible, which Mahan v. Howell holds to be a legitimate objective. The spirit, if not the letter, of the policy behind the preservation of county boundaries and the integrity of counties as the basic unit of state government has been largely preserved. The basic fabric of Mississippi government has not been materially harmed. This has caused, or rendered

unavoidable, the population variations appearing between and among the respective legislative districts. Once the voting public becomes familiar with the new system (which will take time) the best interests of the State will be promoted by single member districts. Using the foundation here established for the first time, when the results of the 1980 census are known, legislative districts may be revised with less population variances and with a negligible impact on the legislative electoral process.

Mississippi has not been allowed to elect a legislature under rules of its own making since 1963. Three quadrennial legislative elections have been held under reapportionments constructed by this Court; yet, for various reasons, none of the Court-ordered plans has ever reached a decision on the merits in the Supreme Court. The most recent effort of the Legislature to reapportion itself foundered upon objections from the Attorney General of the United States. As the Supreme Court indicated in its opinion of May 19, 1976, the time has come to put an end to this litigation. Prior experience teaches that nothing short of the course we have adopted has any real hope of ending it.

In Reynolds v. Sims, 377 U.S. at 577, the Supreme Court said that "the Equal Protection Clause requires that a state make an honest and a good faith effort to construct districts, in both houses of its legislature, as nearly of equal population as is practicable."

Consistently with the considerations advanced in our opinion of August 24, 1976, this Court has done all it can do in the way of an honest, good faith effort.

In Reynolds v. Sims, supra, the Supreme Court also said:

"A State may legitimately desire to maintain the integrity of various political subdivisions, insofar as possible, and provide for compact districts of contiguous territory in designing a legislative apportionment scheme. Valid considerations may underlie such aims. Indiscriminate districting, without any regard for political subdivision or natural or historical boundary lines, may be little more than an open invitation to partisan gerrymandering." Mahan v. Howell confirmed this principle.

In the formulation of our Court-ordered plan, literally hundreds of boundary possibilities have been considered in an effort to achieve population norms but there has been no gerrymandering.

DECREE

It is Ordered, Adjudged and Decreed that for the regular quadrennial elections of 1979, and thereafter until changed according to law, the 122 members of the Mississippi House of Representatives shall be elected from 122 districts, as follows, to-wit:

District Number	Description	Population and percentage over or under the population norm
1	DeSoto County: Beat 3, Beat 4, and the Precinct of Hernando East	17,802 - 2.0
2	DeSoto County: Beat 1, Beat 2, and the Precincts of Alphaba, Lewisburg West, Love, Nesbit East, and Pleasant Hill	18,083 - 0.5
3	Marshall County: Beats 1, 2, 3, and 4	19,226 + 5.8
4	Benton County: Marshall County: Beat 5: Lafayette County: Beats 2 and 3	19,235 + 5.9
5	Tippah County: Prentiss County: Beat 2	19,879 + 9.4

6	Alcorn County:	Beat 1, Beat 4, Beat 5, and the Precincts of Biggersville and Rienzi	19,377 + 6.6
7	Tishomingo County:	Beats 1, 2, 3, and 4	
	Alcorn County:	Beat 2, and the Precinct of South Corinth	19,754 + 8.7
8	Tunica County:	Beats 1, 2, 3, and 4, plus the Armory Precinct;	
	Coahoma County:	The Precincts of Coahoma, Jonestown, Lula, and Mattson	16,635 - 8.5
9	Tate County:		18,544 + 2.1
10	Panola County:	Beats 1, 2, and 5	19,137 + 5.3
11	Panola County:	Beats 3 and 4;	
	Yalobusha County:	Beats 1, 2, 3, and 4	17,302 - 4.8

12	Lafayette County:	Beats 1, 4, and 5	17,252 - 5.1
13	Union County:		19,096 + 5.1
14	Prentiss County:	Beats 1, 3, 4, and 5;	
	Tishomingo County:	Beat 5	19,094 + 5.1
15	Coahoma County:	Beat 2: Lyon Precinct in Beat 1: Clarksdale, Rena Lara, and Bobo Precincts in Beat 5	17,303 - 4.8
16	Coahoma County:	Beat 4: All Clarksdale Precincts in Beats 1 and 3; Roundaway Precinct in Beat 5	17,017 - 6.4
17	Quitman County:		
	Tunica County:	The Precinct of Two Mile Lake	17,234 - 5.2

18	Pontotoc County:		17,363 - 4.4
19	Lee County:	Beat 1, Beat 2, and Belden Precinct	19,411 + 6.8
20	Lee County:	The Precincts of Auburn, Bissell, East Heights North, East Heights South, Eggville, Gilvo, Mooreville, Old Union, Palmetto, Tupelo III, Tupelo IV, Tupelo V, and Verona	19,058 + 4.9
21	Itawamba County:		
	Lee County:	The Precincts of Petersburg, Plantersville, and Richmond	19,146 + 5.4
22	Bolivar County:	Beat 1, and the Precincts of Pace, Longshot, Shaw, Skene, and Stringtown;	
	Sunflower County:	The Precinct of Boyer-Linn	16,687 - 8.2
23	Bolivar County:	The Precincts of Central Cleveland, East Central Cleveland, East Cleveland, West Cleveland, and Boyle	17,037 - 6.2

24	Bolivar County:	Beat 3, and the Precincts of North Cleveland and Merigold	16,912 - 6.9
25	Sunflower County:	Beat 1, Beat 3, and the Precinct of Moorhead	17,605 - 3.1
26	Sunflower County:	Beat 5; Sunflower and Indianola Precincts in Beat 2; Dockery, Doddsville, and Ruleville Precincts in Beat 4	18,215 + 0.2
27	Tallahatchie County:	Beats 1, 2, 4, and 5, and the Precinct of Paynes	17,487 - 3.8
28	Calhoun County:		
	Yalobusha County:	Beat 5	16,928 - 6.8
29	Chickasaw County:		
	Lee County:	The Precincts of Pleasant Grove and Shannon	19,001 + 4.6

226-362 O - 78 - 6

30	Monroe County:	Beat 4, and the Precincts of Aberdeen III, Lackey, Central Grove, Boyd's (Pine Grove), Nettleton, Willis, and Wren		
	Lee County:	The Precincts of Brewer, Fedron, and Nettleton	18,251	+ 0.4
31	Monroe County:	Beat 1, Beat 2, and the Precincts of Amory V, Bartahatchie, Bigbee, Gattman, Grubb Springs, and Hamilton	18,976	+ 4.4
32	Issaquena County:			
	Washington County:	Beat 1, and the Precinct of Avon	18,205	+ 0.2
33	Washington County:	The Precincts of Ward Center, Community Center, Arcola, and Hollandale	17,409	- 4.2

34	Washington County:	Beat 3, and the Precinct of New County Garage	19,472 + 7.2
35	Washington County:	The Precincts of Darlove, Bourbon, County Recreation Center, Industrial College, Leland Health Clinic, and Leland Light Plant	18,232 + 0.3
36	Leflore County:	Beat 1, Beat 3, and the Precinct of Money	18,111 - 0.3
37	Leflore County:	Beats 4 and 5	16,765 - 7.7
38	Carroll County:		
	Leflore County:	The Precincts of Northeast Greenwood and East Greenwood	
	Attala County:	Beat 3, less Possumneck Precinct	17,543 - 3.5

39	Grenada County:	Beats 1, 3, 4, and 5;	
	Tallahatchie County:	Beat 3, less Paynes Precinct	17,732 - 2.4
40	Montgomery County:		
	Grenada County:	Beat 2	16,891 - 7.0
41	The Counties of Choctaw and Webster:		18,487 + 1.7
42	Clay County:		18,840 + 3.7
43	Oktibbeha County:	Beats 1, 3, 4, and the Precinct of Hickory Grove	18,981 + 4.5
44	Oktibbeha County:	Beat 5, and the Precincts of Northeast Starkville, and Osborn;	
	Lowndes County:	The Precincts of Mayhew, West Lowndes, Barrow, and University	18,721 + 3.0

45	Lowndes County:	The Precincts of Air Base, Caledonia, Rural Hill, New Hope, Fairview, and Coleman	18,641 + 2.3
46	Lowndes County:	The Precincts of Brandon, Lee High, Stokes-Beard, Sale, Franklin, Caldwell, and Hunt	18,162 - 0.0
47	Sharkey County:		
	Humphreys County:	Beat 5:	
	Yazoo County:	The Precincts of Carter, Lake City, Zion, Eden, Free Run, East Midway, West Midway, Harttown, Enola, Fairview, and Holly Bluff	16,521 - 9.1
48	Humphreys County:	Beats 1, 2, 3, and 4;	
	Holmes County:	The Precincts of Coxburg, Tchula, and Thornton	17,406 - 4.2
49	Holmes County:	Entire County, less the Precincts of Coxburg, Tchula, and Thornton	17,602 - 3.1

50	Attala County:	Beats 1, 2, 4, 5, and the Precinct of Possumneck	18,659 + 2.7
51	Winston County:		18,406 + 1.3
52	Noxubee County;		
	Lowndes County:	The Precincts of Crawford and Artesia	18,235 + 0.4
53	Warren County:	The Precincts of Beechwood, Jett, Redbone, Yokena, Goodrum, and Tingle	16,703 - 8.1
54	Warren County:	The Precincts of Cedar Grove, St. Aloysius, Auditorium, Central Fire, American Legion, Fire Station No. 7, and Jonestown	16,793 - 7.6

55	Warren County:	The Precincts of Kings, Oak Ridge, Walters, Brunswick, Redwood, Bovina, and Culkin;	
	(Warren County reapportionment by Beats is on appeal to the Supreme Court).		
	Yazoo County:	The Precincts of Dover, East Bentonia, West Bentonia, Mechanicsburg, Phoenix, Satartia, Fugate, Deasonville, and Valley	17,006 - 6.4
56	Yazoo County:	The Precincts of Benton, Center Ridge, Robinette, East Courthouse, West Courthouse, South City Hall, North City Hall, West Lintonia, and East Lintonia	16,912 - 6.9
	(Yazoo County is in the process of reapportionment by Beats; hence we use Precincts).		
57	Madison County:	Beats 1, 4, and 5	19,853 + 9.3
58	Leake County:		
	Neshoba County:	The Precincts of Hays, Turner, Dixon, and Groves	19,012 + 4.6

59	Neshoba County:	The entire County, less the Precincts of Hays, Turner, Dixon, and Groves	18,875 + 3.9
60	Kemper County:		
	Lauderdale County:	All Precincts in Beats 1 and 2 outside the City of Meridian: The Precincts of Center Hill, Obadiah, and Shucktown in Beat 3	19,342 + 6.4
61	Hinds County:	Precincts 17, 35-38, 42-45, Twin Pines	
62	Hinds County:	Precincts 27, 29, 39-41, 79-83, Liberty Grove	
63	Hinds County:	Precincts 1, 5, 6, 8, 9, 14-16, 32-34	
64	Hinds County:	Precincts 12, 13, 21-23, 28, 30	

65	Hinds County:	Precincts 2, 4, 10, 11, 18, 19, 50
66	Hinds County:	Precincts 20, 31, 52, 55-57, 61
67	Hinds County:	Precincts 47, 51, 53, 58, 63, 64, 66
68	Hinds County:	Precincts 24-26, 54, 59, 60, 62, 67-69
69	Hinds County:	Precincts 49, 70-77
70	Hinds County:	Precincts of Bolton, Brownsville, Clinton 1, Clinton 2, Clinton 3, Clinton 4, Cynthia, Flag Chapel, North Clinton, Pocahontas, Presidential Hills, Tinnin
71	Hinds County:	Precincts of Cayuga, Edwards, Fairfax, Hickory, Learned, Midway, Raymond 1, Raymond 2, Van Winkle 1, Van Winkle 2

72	Hinds County:	Precincts of Briarcliff, Byram, Chapel Hill, Dry Grove, Forest Hill, Old Byram, Red Hill, Terry, Utica 1, Utica 2, Woodville Heights	

The single member district plan ordered into effect by this 3-Judge Court for Hinds County in 1975 resulted in the election of three black Representatives, where none had been elected before. We leave these Districts unchanged.

73	Rankin County:	Beat 2;	
	Madison County:	Beats 2 and 3	18,731 + 3.1
74	Rankin County:	Beats 4 and 5	17,624 - 3.0
75	Rankin County:	Beats 1 and 3	17,462 - 3.9
76	Scott County:	Beats 1, 2, 4, and 5	17,087 - 6.0
77	Newton County:		18,983 + 4.5

78	Lauderdale County:	Meridian City Precincts 1, 2, 3, 4, 7, and 8, and the County Precinct of School Gap	19,143 + 5.3
79	Lauderdale County:	Meridian City Precincts 5, 6, 9, 13, 14, 15, 16, 17, and 18, and the Precinct of East Bonita	19,266 + 6.0
80	Lauderdale County:	All Precincts in Beat 3 outside the the City of Meridian except Obadiah, Shucktown, Center Hill, and School Gap: All Precincts in Beat 4 except Meridian Precinct No. 13: All Precincts in Beat 5 outside the City of Meridian except East Bonita	19,569 + 7.7
81	The Counties of Claiborne and Jefferson:		19,381 + 6.7
82	Copiah County:	Beat 1, Beat 4, Beat 5, and the Precincts of East Hazlehurst, West Hazlehurst, Barlow, Glancy, and Allen	18,972 + 4.4

83	Lawrence County:		
	Copiah County:	Beat 2 and the Precincts of Ainsworth and Martinsville West:	
	Simpson County:	The Precincts of Bridgeport, Pinola, and Shivers	18,647 + 2.6
84	Simpson County:	Beat 1, Beat 2, Beat 3, Beat 5; the Precincts of Magee North and Magee South	18,214 + 0.2
85	Smith County:		
	Scott County:	Beat 2	17,843 - 1.8
86	Jasper County:	Beats 1, 3, 4, and 5:	
	Jones County:	The Precincts of Gitano, Matthews, and Shady Grove	17,408 - 4.2
87	Clarke County:		
	Jasper County:	Beat 2	16,701 - 8.1
88	Adams County:	Beats 1 and 2, and the Precincts of Liberty Park, Concord, and Palestine	19,109 + 5.2

89	Adams County:	Beats 4 and 5, and the Precinct of Somerset	18,184 + 0.1
90	Franklin County:		
	Lincoln County:	Beat 4, and the Precincts of Caseyville, Loyd Star, Old Red Star, Vaughn, and Zetus	16,966 - 6.6
91	Lincoln County:	Beat 1, Beat 2, Beat 3, and the Precinct of Northwest Brookhaven	17,243 + 5.1
92	Jefferson Davis County:	Beats 1, 3, 4, and 5;	
	Covington County:	Beat 3, Beat 4, Beat 5, and the Precincts of South Collins and Eminence	19,025 + 9.1
93	Jones County:	Beat 2, and the Precincts of West Jones, Mason School, 26th Street Fire Station, and Lamar School	17,470 - 3.9
94	Jones County:	Beat 3, and the Precincts of Sharon, Sandersville, City Barn, Maddox School, Stone Deavours School	18,439 + 1.5

95	Jones County:	Beat 4, and the Precincts of Moselle, Pendorf, Pine Grove, Rainey, South Jones, and Shelton	17,382 - 4.3
96	Wayne County:		16,650 - 8.4
97	Wilkinson County:		
	Amite County:	Beats 1, 2, and 3	19,354 + 6.5
98	Pike County:	Beats 1 and 5:	
	Amite County:	Beats 4 and 5	18,211 - 0.2
99	Pike County:	Beats 2, 3, and 4	19,053 + 4.9
100	Walthall County:		
	Jefferson Davis County:	Beat 2:	
	Marion County:	The Precincts of Goss, Morgantown, White Bluff, Stovall, and Kokomo	18,371 + 1.1

101	Marion County:	Entire County except the Precincts of Goss, Morgantown, White Bluff, Stovall, and Kokomo	19,587 + 7.8
102	Lamar County:		
	Covington County:	Beat 1, and the Precincts of Richmond and Sanford	19,735 + 8.6
103	Forrest County:	The Precincts of Lillie Burney, Woodley School, Jones School, Petal High, East Bowie, Petal-Harvey, Camp School, and Hawkins Junior High	17,504 - 3.7
104	Forrest County:	The Precincts of Blair High, Eatonville, Glendale, Petal-Leeville, Rawls Springs, Macedonia, Davis School, Grace Christian, and Pinecrest	17,555 - 3.4

105	Forrest County:	The Precincts of Central School, Dixie School, Westside, Eaton School, Sunrise, Walthall, Dixie Pine, Rowen High, William Carey, and Thames	17,799 - 2.0
106	Forrest County:	The Precincts of Forrest County A.H.S., McCallum, McLaurin, Brooklyn, Carnes, and Maxie:	
	Pearl River County:	The Precincts of Poplarville East, Poplarville West, Byrd Line, Hickory Grove, Gum Pond, Wolf River, Oak Hill, Hillsdale, Fords Creek, Buck Branch, White Sand, Mill Creek, Derby, Progress, Silver Run, Steep Hollow, Savannah, McNeill, and Caesar:	
	Stone County:	Beat 2	17,377 - 4.4

107	The Counties of Greene and Perry:		17,610 - 3.1
108	Pearl River County:	Beat 4, and the Precincts of Picayune I, II, III, and V; the Precincts of Ozone, Carriere, and Salem	17,036 - 6.2
109	George County:		
	Stone County:	Beats 1, 3, 4, and 5	18,940 + 4.2
110	Hancock County:		17,387 - 4.3
111	Harrison County:	The Precincts of Biloxi Nos. 1-4, D'Iberville, North Bay, and White Plains	19,217 + 5.8
112	Harrison County:	The Precincts of Biloxi Nos. 5-7, 7A-8, Holly Hills, and Howard Creek	19,086 + 5.0
113	Harrison County:	The Precincts of Stonewall, West Handsboro, Biloxi Nos. 9-11, and East Handsboro	19,139 + 5.3

226-362 O - 76 - 7

114	Harrison County:	The Precincts of Gulfport Nos. 7 and 12, New Hope, E & W Saucier, Gulfport No. 11, Advance, East Lyman, East Orange Grove, Peace, and Poplar Head	19,324 + 6.3
115	Harrison County:	The Precincts of Gulfport Nos. 4, 5, 6, 8, and 9, East and West Mississippi City, and East and West North Gulfport	19,380 + 6.7
116	Harrison County:	The Precincts of Gulfport Nos. 13 and 14, Gulfport Nos. 2, 3, and 10, Outside Long Beach, West Orange Grove, West Lyman, and Lizana	19,020 + 4.7
117	Harrison County:	The Precincts of Gulfport No. 1, East Pass Christian, West Pass Christian, East Long Beach, West Long Beach, Pineville, Delisle, Ladner, Vidalia, and Riceville	19,416 + 6.9

118	Jackson County:	Beat 1	17,595 - 3.2
119	Jackson County:	Beat 2	17,595 - 3.2
120	Jackson County:	Beat 3	17,595 - 3.2
121	Jackson County:	Beat 4	17,595 - 3.2
122	Jackson County:	Beat 5	17,595 - 3.2

(The County has been reapportioned by Federal Court Order, with practically equal population in each Beat).

Total Population assigned to the 122 Districts	2,216,912
Total Population of the State, 1970 Census	2,216,912

Explanatory Notes

The special problems and unusual circumstances involved in dismantling a 159 year old system of legislative elections in Mississippi, and constructing an entirely new system of single member districts, were described in our opinion of August 24, 1976, redistricting the State for the election of 52 Senators. We need not repeat them with reference to the House of Representatives, except to emphasize that the exceedingly low 1% population norm of 181 persons has made our task with reference to 122 House members far more difficult.

We are aware that in Chapman v. Meier, 96 S.Ct. at 764, with reference to court-ordered plans the Supreme Court held that a maximum deviation of 20% is

> "impermissible in the absence of significant state policies or other considerations that require adoption of a plan with so great a variance. The burden is on the District Court to elucidate the reasons necessitating any departure from the goal of population equality, and to articulate clearly the relationship between the variance and the state policy furthered".

This Court makes no effort to conceal its unhappiness that in this 122 seat reapportionment District 5 is 9.4% over the norm, District 57 is 9.3% over the norm, and District 92 is 9.1% above the norm. District 47 is 9.1% below the norm. Thus, there is an

aggregate deviation of 18.5%. Even so, 74 districts vary no more than 5% either way.

Districts 5 and 92 are in the heavily populated white area of Northeast Mississippi. Tippah County is 16% black. Prentiss County is 11% black. The Districts are surrounded by Districts also above the norm. A shift of a few dangling precincts, of uncertain population, to achieve a smaller variation would have no impact on the personal identity or political principles of the Representatives chosen from these Districts. On the other hand, considering Mississippi's system of counties, beats, precincts, and permanent voter registration such shifts would complicate the legislative electoral process in this area, with no added benefit to the effectiveness of the individual vote.

District 47 is situated in a solidly black area (black population percentages 68%, 64%, and 53%). It is in the Delta, cut up by numerous bayous, lakes and a major river. It is surrounded by Districts already below the norm.

District 57 is wholly within Madison County (62.3% black), which has not been reapportioned under the one man-one vote rule. When this occurs this District will have approximately 17,841 people, or 1.2% below the norm.

District 92 is composed of parts of two small counties, adjacent to the County of Jones, which alone

has enough population for 3 Representatives. Diligent search for a viable percentage reduction here has been fruitless.

Black Population Majority Districts
in this Court Ordered Reapportionment of
the Mississippi House of Representatives

District 3	Marshall County is 61.9% black.
Districts 8, 15, and 16	Tunica County is 72.6% black; Coahoma County is 64.3% black.
District 10	Panola County is 51.2% black.
District 17	Quitman County is 57.4% black; Tunica County is 72.6% black.
Districts 22, 23, 24, 25, and 26	Bolivar County is 61.4% black; Sunflower County is 62.7% black.
District 27	Tallahatchie County is 60.1% black.
Districts 32, 33, 34, and 35	Issaquena County is 62% black; Washington County is 54.4% black.
Districts 36 and 37	Leflore County is 57.8% black.
District 38	Carroll County is 50.7% black, Leflore County is 57.8% black, Beat 3 of Attala County is 25% black.

Districts 47, 48, 49, and 56	Sharkey and Humphrey Counties are 64% black, Holmes County is 68% black, and Yazoo County is 53% black.
District 52	Noxubee County is 65% black; the precincts of Artesia and Crawford are preponderantly black.
District 57	Madison County is 62.3% black.
Districts 61-72 Hinds County	Elected three black Representatives in 1975.
District 81	Claiborne County is 74.5% black; Jefferson County is 75.2% black.
District 97	Wilkinson County is 67% black; Amite County is 50.4% black.

Thirty Districts have black population majorities.

Kemper County, black population 54%, is the only black majority county wholly attached to a white majority county area to form a district. It has only 10,233 people, 56% of the required population norm for a House Seat.

Special Elections

In the Order of June 25, 1975, we stated that when a permanent plan for the reapportionment of the Mississippi Legislature "shall have been accomplished, special elections may be ordered in those legislative districts where required by law, equity, or the Constitution of the United States".

In our Order of July 8, 1975, dealing with the temporary plan for elections in that year, we said:

> "We have determined that no irreparable injury will occur by allowing the 1975 legislative elections to proceed under a temporary plan on the dates provided by law. If the permanent plan, later to be adopted manifests that the temporary plan has caused such an [irreparable] injury the same shall be corrected by special elections as provided by Mississippi law."

As in our partial decree of August 24, 1976, with reference to the Mississippi State Senate, we now direct the parties within fifteen (15) days to file a list of the districts for the election of Representatives in which special elections should be held, if there are any such districts, assigning their reasons as to each district individually.

Upon the receipt of this information, the Court will rule thereon as quickly as reasonably possible. Should special elections be ordered in any district, the same will be held only after fully adequate notice and in time for the person elected to take his seat when the Legislature is convened in regular session in January, 1977.

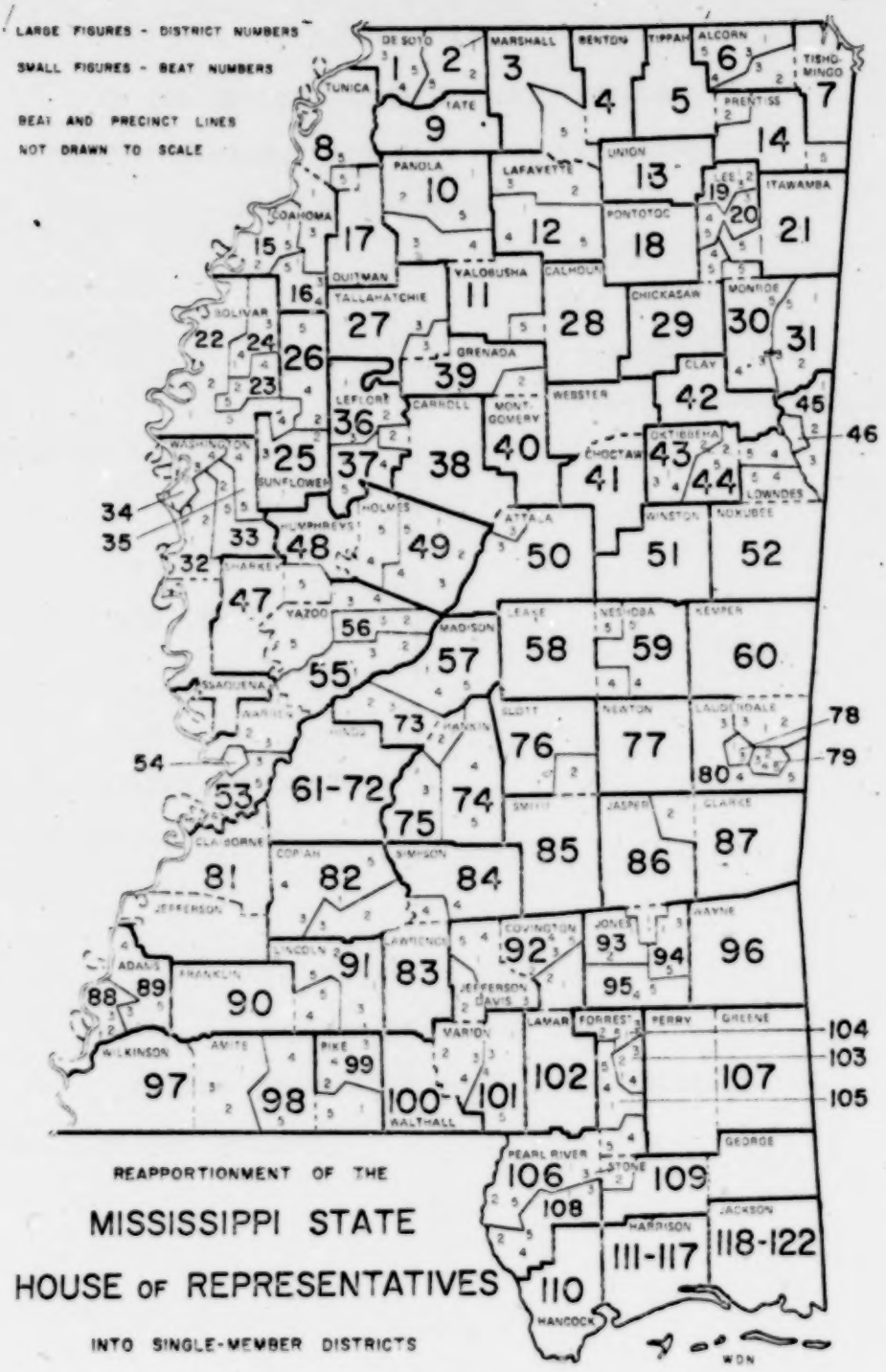
This is not a final decree. The final decree, incorporating all decrees, will be entered when the Court disposes with the matter of special elections.

SO ORDERED, ADJUDGED, and DECREED, this the 8 day of September, 1976.

James P. Coleman
UNITED STATES CIRCUIT JUDGE

Dan M. Russell, Jr.
CHIEF JUDGE, UNITED STATES DISTRICT COURT

Harold Cox
UNITED STATES DISTRICT JUDGE

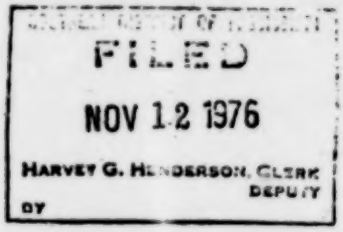

LARGE FIGURES - DISTRICT NUMBERS
SMALL FIGURES - BEAT NUMBERS
BEAT AND PRECINCT LINES
NOT DRAWN TO SCALE
REAPPORTIONMENT OF THE
MISSISSIPPI STATE
HOUSE OF REPRESENTATIVES
INTO SINGLE-MEMBER DISTRICTS

APPENDIX C

IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF MISSISSIPPI

JACKSON DIVISION



PEGGY H. CONNOR, ET AL., Plaintiffs, v. CLIFF FINCH, ET AL., Defendants, and UNITED STATES OF AMERICA, Plaintiff-Intervenor.	)	CIVIL ACTION NO. 3830(A)

Before COLEMAN, Circuit Judge, RUSSELL and COX, District Judges.

PER CURIAM:

This is the third, and the last, of a series of decrees reapportioning the Mississippi Legislature.[1/]

The first decree reapportioned the State Senate from multiple member to single member districts, August 24, 1976, _____ F. Supp. _____ (S.D. Miss., 1976).

The second decree reapportioned the House of Representatives from multiple member to single member districts, September 8, 1976, _____ F. Supp. _____, (S.D. Miss., 1976).

The private plaintiffs and the Department of Justice have filed objections. To improve upon discrepancies involving contiguity and population, the reapportionment of the House of Representatives is hereby amended in the following respects, and to that extent only:

[1/] We have heretofore described the difficulties involved in the transposition of Mississippi's system of multiple member districts into a statewide single-member system for the election of legislators. The acute difficulty arises from the absence of precinct population figures and because most of the county beats have been reapportioned since 1970. No census has been taken within the new beat boundaries. We have used estimates as nearly accurate as obtainable, compiled from known factors. The private plaintiffs and the Justice Department disagree with many of these estimates, but their disagreements are *also based on estimates*. It comes down to whether single member reapportionment shall be allowed to founder on these population disagreements. We decline to embrace that result.

The Department of Justice argues that the use of beat lines results in dilution of black voting strength. There is no credible evidence in this record to support that theory.

District	Geographical Description	Population	Variance
8	Coahoma County: The Precincts of Coahoma, Lula, Lyon, and Jonestown; Tunica County: Beats 1, 2, 3 and 4; also Armory Precinct	16,813	-7.5
15	Coahoma County: Beat 2 and all Clarksdale Precincts in Beats 1 and 3	16,677	-8.2
16	Coahoma County: Beat 4, Beat 5, and Mattson Precinct	17,465	-3.9
53	Warren County: The Precincts of Yokena, Redbone, Goodrow, Tingle, Beechwood, Culkin, Kings, St. Aloyisuis, and American Legion (Blackburn)	16,928	-6.8
54	Warren County: The Precincts of Jett, Fire Station #7, and Jonestown	16,492	-9.2

(The reapportionment of Warren County by Beats is on appeal to the Supreme Court. Precinct structure must conform to Beat structure.)

55	Warren County: The Precincts of Bovina, Oak Ridge, Redwood, Walters, Brunswick, Cedar Grove, Auditorium and Central Fire Station		

	Yazoo County: The Precincts of Dover, East Bentonia, West Bentonia, Phoenix, Mechanicsburg, Satartia, Fugate, Deasonville, and Valley	17,082	-6.0
60	Kemper County Lauderdale County: All Precincts in Beats 1 and 2 outside the City of Meridian; the Precincts of Obadiah and Shucktown in Beat 3	18,932	+4.2
78	Lauderdale County: Meridian City Precincts 1, 2, 3, 7 and 8, and the County Precincts of School Gap and Nellieburg in Beat 3	19,751	+8.7
80	Lauderdale County: All Precincts in Beat 3 outside the City of Meridian except Obadiah, Shucktown, School Gap and Nellieburg; All Precincts in Beat 4 except Meridian Precinct No. 13; All Precincts in Beat 5 outside the City of Meridian except East Bonita	19,371	+6.6
98	Amite County: Beats 4 and 5 Pike County: Beats 4 and 5	17,995	-1.0

99	Pike County: Beats 1, 2 and 3	19,243	+6.0 2/

SPECIAL ELECTIONS

The one remaining substantial issue in this case is whether we should require special elections in any of the newly created legislative districts. The 1975 elections were held pursuant to a temporary plan devised by this Court, from which no party appealed or sought a stay.

On the entire record we have already held that an attempted reapportionment enacted by the Mississippi Legislature in 1975 was not unconstitutional, Conner v. Waller, 396 F. Supp. 1308, reversed on other grounds, 421 U.S. 656 (1975). The exhaustive analysis of the 1975 legislative act reported at 396 F. Supp., 1308-1341, is made a part of this opinion by reference. Suffice it to say that our 1975 court plan proceeded to tighten the legislatively enacted reapportionment. We remain of the view, then expressed, that the temporary plan comported with all pertinent Constitutional standards.

Consequently, we conclude that the only available thesis for ordering special elections in any of the newly formulated legislative districts would be where required to remedy any impermissible dilution of black voting

---

2/ The final judgment in this case, to be set forth on a separate document, Rule 58, Federal Rules of Civil Procedure, will reflect the changes hereinabove set forth.

226-362 O - 76 - 5

strength in the temporary plan when compared with the permanent plan established for the 1979 elections.

The subject has its difficulties. See "Minority Challenges to At-Large Elections: The Dilution Problem", 10 Georgia Law Review 353 (1976).

The Fifth Circuit has written copiously in this field, two of its more recent decisions being McGill v. Gadsden County Commission, 5 Cir. 1976, 535 F.2d 277, and Paige v. Gray, 5 Cir. 1976, 538 F.2d 1108. These cases reviewed the jurisprudence, including such cases as East Carroll Parish School Board v. Marshall, _____ U.S. _____, 96 S.Ct. 1083, 47 L.Ed.2d 296 (1976).

From these cases it seems clear that (1) those who assert dilution of black voting strength have the burden of proving it; and (2) the significance of past discrimination in dilution cases lies in how it bears on political participation today.

In any event, the standards established in the Fifth Circuit Zimmer decision, reaffirmed in Paige, 538 F.2d at 1111, are:

> Where a minority can demonstrate lack of access to the process of slating candidates, the unresponsiveness of legislators to their particularized interests, a tenuous state policy underlying the preference for multi-member or at-large districting, or that the existence of past discrimination in general precludes the effective participation in the election system, a strong case is made. Such proof is enhanced by a showing of the existence of large districts,

> majority vote requirements, anti-single shot voting provisions and the lack of provision for at-large candidates running from particular geographical subdistricts. The fact of dilution is established upon proof of the existence of an aggregate of these factors. The Supreme Court's recent pronouncement in White v. Regester, supra, demonstrates, however, that all these factors need not be proved in order to obtain relief.
> 485 F.2d at 1305.

We think the Eighth Circuit correctly defined the principle when it said,

> The constitutional touchstone is whether the system is open to full minority participation, not whether proportional representation is in fact achieved.
> Dove v. Moore, 8 Cir. 1976, 539 F.2d 1152, 1155.

The electoral process in Mississippi has never known the practice generally described as "slating candidates".

The failure of the plaintiffs to demonstrate any present impact from past discrimination is described at 396 F. Supp. 1325.

Our prior opinion, 396 F. Supp. 1308, 1325, demonstrated the failure of the plaintiffs to show legislative unresponsiveness to the needs of black citizens.

The long established state policy of multi-member districts was thoroughly discussed at 396 F. Supp. 1323.

The Attorney General of the United States dispatched numerous federal observers to witness the

1975 elections in Mississippi -- first primary, second primary, and general election. At these elections state and local officials are nominated and elected, from constable to governor. We requested a detailed report from the Attorney General as to any observed interference with the right of black citizens to participate in the 1975 elections. Nothing was reported beyond some disputes as to whether an individual was registered to vote in the precinct where he was offering to vote, whether he was registered at all, and such like. We observe that the Department of Justice has initiated no prosecutions for alleged violations of federally guaranteed voting rights in 1975.

Observers were dispatched to Mississippi to observe the 1976 Presidential and Congressional elections. The Attorney General has notified this Court of no interference with the right to vote in 1976. On the other hand, the press has uniformly reported that an unusually heavy turn-out of black voters produced the Presidential victory in Mississippi.

We have no difficulty in holding that at the present day interference with the right of black citizens to cast their ballots is a myth. We reaffirm our prior holding, 396 F. Supp. 1326, "that the Voting Rights Act of 1965 has effectually reduced all such racially discriminatory factors to what honestly may be termed an irreducible minimum".

The Senate

There is no justification for ordering special elections in any newly created senatorial district. Every such district with a black population majority was part of a black majority district in 1975. The only difference is that there no longer will be any multiple member districts.

The House of Representatives

Under our 1975 temporary plan there were 49 single member House districts and 7 single member flotorial districts. Twenty multiple member districts elected two representatives each, three elected three members each, and three elected four members each. Our 1979 plan has no multiple member districts.

We now discuss the newly created black majority districts, brought into existence where no black majority district previously existed.

New District 52. Noxubee County and the Precincts of Crawford and Artesia in Lowndes County.

From 1890 until 1962, under the inelastic

provisions of the Constitution of 1890, Noxubee County had three Representatives in the Legislature. It now has 14,288 people, less than enough for one Representative. The black population is 9,397. The white population is 4,844. Under the temporary 1975 plan Noxubee County was combined with Oktibbeha County in District 23A for the election of two Representatives. It was also included in District 23B for the election of a flotorial Representative. The white population of District 23A is 23,413; the black population is 19,401. The 9,397 black citizens of Noxubee County, in a county with not enough population of its own to elect one Representative, took part in the election of three Representatives, two of them coming from a district which was 55% white and 45% black. A special election in new District 52 would necessitate special elections in new Districts 43, 44, 45, and 46, of which Noxubee County is not a part.

For all these reasons, no special election will be ordered for new District 52.

New District 79. Lauderdale County: Meridian City Precincts 5, 6, 9, 13, 14, 15, 16, 17, and 18, and the Precinct of East Bonita.

This newly formed district was in 1975 District No. 79, which had a white population of 65.5%. The

black population of the new district is 56.1%.

A special election in this District will be ordered.

New District 81. The Counties of Claiborne and Jefferson.

Claiborne County has 10,086 people, of whom 7,522 are black, 2,536 are white.

Jefferson County has 9,225 people, of whom 6,996 are black and 2,296 are white.

It will be observed that neither county has enough people to elect a Representative.

Under the 1975 plan, Jefferson County was included in District 32 with Copiah County, a black majority county.

Claiborne County was included with Warren County in District 30 for the election of three Representatives. Warren County has 18,355 black population and 26,474 white. The totals for District 30 (Claiborne and Warren) were 29,410 white and 25,877 black (53% white, 47% black).

An added problem is that a special election in new District 81 would necessitate special elections in new Districts 53, 54, and 55 (Warren County). The

redistricting of beats in Warren County (which necessarily entails the reconstitution of voting precincts) is now on appeal to the Supreme Court. Until the Supreme Court shall have decided that matter, we do not consider that equity requires that we should risk illegal elections in the three Warren County districts.

For all of these reasons, no special election will be ordered in new District 81.

New District 3. Beats 1, 2, 3, and 4 of Marshall County.

In 1975 this area was in District 3A for the election of Representatives. That district included all five beats in Marshall County, instead of four beats as now reconstituted. Marshall County also participated in the election of a floater representative, District 3B. Marshall County has a population of 14,891 black people and 9,101 whites. At the general election of November 4, 1975, a white candidate for representative in District 3A received 5,573 votes. His black opponent received 3,317, carrying ten of the fifty precincts. It would appear that the black people of Marshall County have spoken and we know of no constitutional or equitable principle which would require us to undo the action they have taken.

New District 97. Wilkinson County: Amite County: Beats 1, 2 and 3.

Wilkinson County has a population of 11,099, approximately 61% of the amount required for a representative. It has 7,499 blacks and 3,588 whites. Under the 1975 plan it was in District 34, which had a 54.2% white majority. New District 97, in which Wilkinson is now included, has a total black population of 60.6%.

A special election will be ordered in this District.

Other Districts

The remaining new districts with black population majorities participated in the 1975 elections in districts which had black population majorities at that time. Therefore, special elections will not be ordered in those areas.

Plaintiffs have argued that we should order special elections in all new districts in which two presently sitting Representatives have been thrown together, as well as in the areas which they say are now "left without representation". This argument overlooks the fact that what we have done is to devise a permanent plan for the election of legislators in 1979, not a plan for the wholesale reconstitution of the Legislature in mid-term. The legislators in these areas were elected to represent them for a full four

years unless special elections were necessary. There is nothing of record to indicate that such legislators will now neglect the areas from which they were duly chosen.

Except as hereinabove set forth, all objections and motions for special elections filed by the private plaintiffs and the Department of Justice are found to be without merit and are denied.

The Timing of Special Elections

In fixing a time for special elections, the Court is faced with a dilemma. On October 8, 1976 the Court held an afternoon's conference with the parties to determine if an agreed decree might be entered as to the identity of the districts in which special elections were to be held. The purpose was to avoid the possibility of sending persons to the Legislature in an election which the Supreme Court might later render illegal by disapproving our plan of reapportionment, also possibly unseating legislators lawfully elected in 1975. The effort was nonproductive.

It was suggested that a few new districts might be allowed to elect added members of the House of Representatives, to serve only until the 1979 elections. This would mean that if the plan should

fail to pass the scrutiny of the Supreme Court then only those seats would be vacated and the legislative process would not be unduly disrupted. This was suggested particularly with reference to the districts hereinabove discussed in detail. The Supreme Court has held that it would not disapprove minor variations from a state's prescribed legislative numbers when such a change is shown to be necessary to meet constitutional requirements, Minnesota State Senate v. Beens, 406 U.S. 187, 199 (1972). The private plaintiffs objected on the ground that this would dilute the legislative voting strength of the presently sitting four black members of the House of Representatives. Consequently, we abandoned that approach.

We have concluded that the equitable and least disruptive course would be for the Court to refrain from setting dates for special legislative elections until time for an appeal has expired or until the Supreme Court shall have decided an appeal on the merits. We expressly retain jurisdiction of the case for the purpose of setting dates for special elections as soon as one of the above alternatives shall have occurred.

Court Costs, Special Masters' Fees, and Attorneys' Fees

All appropriate and legal costs of court are adjudged against the defendants, for which judgment, when the amount is computed, will be entered against the State of Mississippi, Fitzpatrick v. Bitzer, ____ U.S. ____, 96 S.Ct. 2666, ____ L.Ed.2d ____ (1976).

The Court has heretofore found that the Mississippi Legislature made a good faith effort to reapportion itself in 1973 and 1975. The 1975 effort was upheld by this Court but failed on account of the disapproval of the Attorney General of the United States. We are thus of the opinion that no attorneys' fees are allowable in this case.

The amount of the fees to be allowed the special masters for their services, for which judgment will be awarded against the State, will be determined after an evidentiary hearing on the reasonableness of such fees, for which jurisdiction is also retained.

The private plaintiffs and the Department of Justice will prepare and submit a proposed judgment, written on a separate document, in accordance with the Rules, embodying each and every appropriate part of the decrees rendered on August 24, 1976, September 8, 1976, and on this date. When

such judgment shall have been duly approved and entered the same will be a final judgment on the reapportionment of the Mississippi Legislature.

SO ORDERED, ADJUDGED, and DECREED, this the _____ day of November, 1976.

Jas. P. Coleman
UNITED STATES CIRCUIT JUDGE

CHIEF U. S. DISTRICT JUDGE

U. S. DISTRICT JUDGE

APPENDIX D

IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

PEGGY J. COMMON, et al.,

Plaintiffs,

v.

CLIFF FINCH, et al.,

Defendants,

and

UNITED STATES OF AMERICA,

Plaintiff-Intervenor.

CIVIL ACTION
NO. 3830(A)

SOUTHERN DISTRICT OF MISSISSIPPI
FILED
NOV 18 1976
HARVEY G. HENDERSON CLERK
DEPUTY
BY

FINAL JUDGMENT

In accordance with the opinions of the Court entered on August 24, 1976, September 8, 1976, and November 12, 1976, it is ORDERED, ADJUDGED, AND DECREED, the defendants, Cliff Finch, Governor of Mississippi, A. F. Summer, Attorney General of Mississippi, Heber Ladner, Secretary of State of Mississippi, Evelyn Gandy, Lieutenant Governor of Mississippi and Presiding Officer of the Mississippi Senate, William B. Alexander, President Pro Tempore of the Mississippi Senate, and C. B. "Buddie" Newman, Speaker of the Mississippi House of Representatives, their officers, agents, servants, employees, attorneys, successors in office, and all persons in active concert or participation with them, are permanently restrained and enjoined as follows:

1. The following permanent legislative reapportionment plans are hereby ordered into full force and effect for the regular quadrennial elections of 1979 and thereafter until altered according to law.

2. Except in those instances in which a special election is ordered, these plans shall not affect the terms of office of legislators elected in 1975.

3. In the event of the death, resignation or removal from office of a legislator presently in office, the vacancy so created shall be filled by a special election in that district promulgated for 1979 in which the legislator shall have resided at the time of such death, resignation or removal from office.

4. The removal by a legislator of his residence from one place to another within the district for which he was elected in 1975 shall not affect the term of office for which he was elected.

5. The 52 members of the Mississippi State Senate to be chosen in the quadrennial election year of 1979 shall be elected from districts consisting of the specified counties, beats, and precincts as follows:

SENATE DISTRICTS

District Number	Description
1	DeSoto County; Marshall County: Beat 3
2	Lafayette County; Marshall County: Beats 1, 2, 4, and 5
3	The Counties of Benton, Pontotoc, and Union
4	The Counties of Alcorn and Tippah
5	The Counties of Prentiss and Tishomingo Itawamba County: Beats 1 and 2
6	Lee County
7	Monroe County; Itawamba County: Beats 3, 4, and 5

8	Lowndes County: less Air Base Precinct
9	The Counties of Chickasaw and Clay Lowndes County: Air Base Precinct
10	The Counties of Choctaw, Montgomery, and Webster; Calhoun County: Beats 1, 2, 4, and 5
11	The Counties of Panola and Yalobusha; Calhoun County: Beat 3
12	The Counties of Tate and Tunica; Quitman County: Beats 1, 2, 3, and 5
13	Coahoma County; Quitman County: Beat 4
14	Bolivar County: except the Precincts of Shelby and Duncan-Alligator
15	Sunflower County; Bolivar County: the Precincts of Shelby and Duncan-Alligator
16	Washington County: Beats 1, 3, and 4
17	Humphreys County; Washington County: Beats 2 and 5
18	Leflore County
19	The Counties of Grenada and Tallahatchie

226-362 O - 76 - 9

20	The Counties of Carroll and Leake; Attala County: Beats 1, 2, 3, and 4
21	The Counties of Neshoba and Winston; Attala County: Beat 5
22	The Counties of Noxubee and Oktibbeha
23	Kemper County; Lauderdale County: Beats 1 and 3
24	Clarke County: Beat 4 Lauderdale County: Beats 2, 4, and 5
25	The Counties of Jasper and Smith; Clarke County: Beats 1, 2, 3, and 5
26	The Counties of Newton and Scott
27	Rankin County
28	Madison County; Holmes County: Beats 2 and 3 Yazoo County: Beats 2 and 4
29	The Counties of Issaquena and Sharkey; Holmes County: Beats 1, 4, and 5 Yazoo County: Beats 1, 3, and 5

30 Warren County

31 Hinds County: Beat 1

32 Hinds County: Beat 2

33 Hinds County: Beat 3

34 Hinds County: Beat 4

35 Hinds County: Beat 5

36 Simpson County;

Copiah County: Beats 1, 2, 4, and 5

37 The Counties of Claiborne and Lincoln;

Copiah County: Beat 3

38 Jefferson County;

Adams County: Beats 1, 2, 4, and 5

39 The Counties of Amite, Franklin and Wilkinson;

Adams County: Beat 3

40 Pike County;

Walthall County: Beats 1, 2, and 3

41 The Counties of Lawrence and Marion;

Jefferson Davis County: Beat 2

Walthall County: Beats 4 and 5

42 Covington County;

Jefferson Davis County: Beats 1, 3, 4, and 5

Jones County: Beat 5, and the Precincts of County Barn and Ellisville Courthouse

43	Jones County: Beats 1, 2, 3, and 4, less the Precincts of County Barn and Ellisville Courthouse
44	Forrest County: Beats 1, 2, and 3; the Precincts of Camp School, Dixie Pine, Hawkins Junior High, Rowan High, William Carey, and McCallum
45	The Counties of Lamar and Perry: Forrest County: Beat 5 and the Precincts of County A.H.S. and McLaurin Stone County: Beats 1 and 2
46	The Counties of George, Greene, and Wayne: Stone County: Beats 3, 4, and 5
47	The Counties of Hancock and Pearl River
48	Harrison County: the City of Gulfport and Precinct 11 in the City of Biloxi
49	Harrison County: all of the City of Biloxi except Precinct 11
50	Harrison County: all that part outside the Cities of Biloxi and Gulfport
51	Jackson County: all that part outside the Cities of Moss Point and Pascagoula plus the Precinct of Bayou Casotte No. 4
52	Jackson County: the City of Moss Point; all of the City of Pascagoula except the Precinct of Bayou Casotte No. 4

6. For the regular quadrennial election of 1979, and thereafter until changed according to law, the 122 members of the Mississippi House of Representatives shall be elected from 122 districts as follows:

HOUSE DISTRICTS

District Number	Description
1	DeSoto County: Beat 3, Beat 4, and the Precinct of Hernando East
2	DeSoto County: Beat 1, Beat 2, and the Precincts of Alphaba, Lewisburg West, Love, Nesbit East, and Pleasant Hill
3	Marshall County: Beats 1, 2, 3, and 4
4	Benton County; Marshall County: Beat 5; Lafayette County: Beats 2 and 3
5	Tippah County; Prentiss County: Beat 2
6	Alcorn County: Beat 1, Beat 4, Beat 5, and the Precincts of Biggersville and Rienzi
7	Tishomongo County: Beats 1, 2, 3, and 4 Alcorn County: Beat 2, and the Precinct of South Corinth
8	Coahoma County: The Precincts of Coahoma, Lula, Lyon, and Jonestown; Tunica County: Beats 1, 2, 3, and 4; also Armory Precinct

Tate County:

Panola County: Beats 1, 2, and 5

Panola County: Beats 3 and 4;

Yalobusha County: Beats 1, 2, 3, and 4

Lafayette County: Beats 1, 4, and 5

Union County:

Prentiss County: Beats 1, 3, 4, and 5;

Tishomingo County: Beat 5

Coahoma County: Beat 2 and all Clarksdale Precincts in Beats 1 and 3

Coahoma County: Beat 4, Beat 5, and Mattson Precinct

Quitman County;

Tunica County: The Precinct of Two Mile Lake

Pontotoc County;

Lee County: Beat 1, Beat 2, and Belden Precinct

Lee County: The Precincts of Auburn, Bissell, East Heights North, East Heights South, Eggville, Galvo, Mooreville, Old Union, Palmetto, Tupelo III, Tupelo IV, Tupelo V, and Verona

21	Itawamba County;	
	Lee County:	The Precincts of Petersburg, Plantersville, and Richmond
22	Bolivar County:	Beat 1, and the Precincts of Face, Longshot, Shaw, Skene, and Stringtown;
	Sunflower County:	The Precinct of Boyer-Linn
23	Bolivar County:	The Precincts of Central Cleveland, East Central Cleveland, East Cleveland, West Cleveland, and Boyle
24	Bolivar County:	Beat 3, and the Precincts of North Cleveland and Merigold
25	Sunflower County:	Beat 1, Beat 3, and the Precinct of Moorhead
26	Sunflower County:	Beat 5; Sunflower and Indianola Precincts in Beat 2; Dockery, Doddsville, and Ruleville Precincts in Beat 4
27	Tallahatchie County:	Beats 1, 2, 4, and 5, and the Precinct of Paynes
28	Calhoun County;	
	Yalobusha County:	Beat 5
29	Chickasaw County;	
	Lee County:	The Precincts of Pleasant Grove and Shannon

30 Monroe County: Beat 4, and the Precincts of Aberdeen III, Lackey, Central Grove, Boyd's (Pine Grove), Nettleton, Willis, and Wren

Lee County: The Precincts of Brewer, Kedron, and Nettleton

31 Monroe County: Beat 1, Beat 2, and the Precincts of Amory V, Hatchatomie, Higbee, Gattman, Grubb Springs, and Hamilton

32 Issaquena County;

Washington County: Beat 1, and the Precinct of Avon

33 Washington County: The Precincts of Ward Center, Community Center, Arcola, and Hollandale

34 Washington County: Beat 3, and the Precinct of New County Garage

35 Washington County: The Precincts of Darlove, Bourbon, County Recreation Center, Industrial College, Leland Health Clinic, and Leland Light Plant

36 Leflore County: Beat 1, Beat 3, and the Precinct of Money

37 Leflore County: Beats 4 and 5

38 Carroll County;

Leflore County: The Precincts of Northeast Greenwood and East Greenwood

Attala County: Beat 3, less Possumneck Precinct

39 Grenada County: Beats 1, 3, 4, and 5;

Tallahatchie County: Beat 3, less Paynes Precinct

40 Montgomery County:

Grenada County: Beat 2

41 The Counties of Choctaw and Webster;

42 Clay County;

43 Oktibbeha County: Beats 1, 3, 4, and the Precinct of Hickory Grove

44 Oktibbeha County: Beat 5, and the Precincts of Northeast Starkville, and Osborn;

Lowndes County: The Precincts of Mayhew, West Lowndes, Barton, and University

45 Lowndes County: The Precincts of Air Base, Caledonia, Rural Hill, New Hope, Fairview, and Coleman

46 Lowndes County: The Precincts of Brandon, Lee High, Stokes-Beard, Sale, Franklin, Caldwell, and Hunt

47 Sharkey County:

Humphreys County: Beat 5:

Yazoo County: The Precincts of Carter, Lake City, Zion, Eden, Free Run, East Midway, West Midway, Harrtown, Enola, Fairview, and Holly Bluff

48	Humphreys County:	Beats 1, 2, 3, and 4;
	Holmes County:	The Precincts of Coxburg, Tchula, and Thornton
49	Holmes County:	Entire County, less the Precincts of Coxburg, Tchula, and Thornton
50	Attala County:	Beats 1, 2, 4, 5, and the Precinct of Possumneck
51	Winston County;	
52	Noxubee County;	
	Lowndes County:	The Precincts of Crawford and Artesia
53	Warren County:	The Precincts of Yokena, Redbone, Goodrow, Tingle, Beechwood, Culkin, Kings, St. Aloysius, and American Legion (Blackburn)
54	Warren County:	The Precincts of Jett, Fire Station #7, and Jonestown
55	Warren County:	The Precincts of Bovina, Oak Ridge, Redwood, Walters, Brunswick, Cedar Grove, Auditorium and Central Fire Station
	Yazoo County:	The Precincts of Dover, East Bentonia, West Bentonia, Phoenix, Mechanicsburg, Satartia, Fugate, Deasonville, and Valley
56	Yazoo County:	The Precincts of Benton, Center Ridge, Robinette, East Courthouse, West Courthouse, South City Hall, North City Hall, West Lintonia, and East Lintonia

57	Madison County:	Beats 1, 4, and 5
58	Leake County;	
	Neshoba County:	The Precincts of Hays, Turner, Dixon, and Groves
59	Neshoba County:	The entire county, less the Precincts of Hays, Turner, Dixon, and Groves
60	Kemper County	
	Lauderdale County:	All Precincts in Beats 1 and 2 outside the City of Meridian; the Precincts of Obadiah and Shucktown in Beat 3
61	Hinds County:	Precincts 17, 35-38, 42-45, Twin Pines
62	Hinds County:	Precincts 27, 29, 39-41, 79-83, Liberty Grove
63	Hinds County:	Precincts 1, 5, 6, 8, 9, 14-16, 32-34
64	Hinds County:	Precincts 12, 13, 21-23, 28, 30
65	Hinds County:	Precincts 2, 4, 10, 11, 18, 19, 50
66	Hinds County:	Precincts 20, 31, 52, 55-57, 61
67	Hinds County:	Precincts 47, 51, 53, 58, 63, 64, 66
68	Hinds County:	Precincts 24-26, 54, 59, 60, 62, 67-69
69	Hinds County:	Precincts 49, 70-77

70	Hinds County:	Precincts of Bolton, Brownsville, Clinton 1, Clinton 2, Clinton 3, Clinton 4, Cynthia, Flag Chapel, North Clinton, Pocahontas, Presidential Hills, Tinnin
71	Hinds County:	Precincts of Cayuga, Edwards, Fairfax, Hickory, Learned, Midway, Raymond 1, Raymond 2, Van Winkle 1, Van Winkle 2
72	Hinds County:	Precincts of Briarcliff, Byram, Chapel Hill, Dry Grove, Forest Hill, Old Byram, Red Hill, Terry, Utica 1, Utica 2, Woodville Heights
73	Rankin County: Madison County:	Beat 2; Beats 2 and 3
74	Rankin County:	Beats 4 and 5
75	Rankin County:	Beats 1 and 3
76	Scott County:	Beats 1, 2, 4, and 5
77	Newton County:	

78	Lauderdale County:	Meridian City Precincts 1, 2, 3, 7 and 8, and the County Precincts of School Gap and Nellieburg in Beat 3
79	Lauderdale County:	Meridian City Precincts 5, 6, 9, 13, 14, 15, 16, 17, and 18, and the Precinct of East Bonita
80	Lauderdale County:	All Precincts in Beat 3 outside the City of Meridian except Obadiah, Shucktown, School Gap and Nellieburg; All Precincts in Beat 4 except Meridian Precinct No. 13; All Precincts in Beat 5 outside the City of Meridian except East Bonita
81	The Counties of Claiborne and Jefferson;	
82	Copiah County:	Beat 1, Beat 4, Beat 5 and the Precincts of East Hazlehurst, West Hazlehurst, Barlow, Glancy, and Allen
83	Lawrence County;	
	Copiah County:	Beat 2 and the Precincts of Ainsworth and Martinsville West;
	Simpson County:	The Precincts of Bridgeport, Pinola, and Shivers
84	Simpson County:	Beat 1, Beat 2, Beat 3, Beat 5; the Precincts of Magee North and Magee South
85	Smith County;	
	Scott County:	Beat 2

86	Jasper County:	Beats 1, 3, 4, and 5;
	Jones County:	The Precincts of Gitano, Matthews, and Shady Grove
87	Clarke County;	
	Jasper County:	Beat 2
88	Adams County:	Beats 1 and 2, and the Precincts of Liberty Park, Concord, and Palestine
89	Adams County:	Beats 4 and 5, and the Precinct of Somerset
90	Franklin County:	
	Lincoln County:	Beat 4, and the Precincts of Caseyville, Loyd Star, Old Red Star, Vaughn, and Zetus
91	Lincoln County:	Beat 1, Beat 2, Beat 3, and the Precinct of Northwest Brookhaven
92	Jefferson Davis County:	Beats 1, 3, 4, and 5;
	Covington County:	Beat 3, Beat 4, Beat 5, and the Precincts of South Collins and Eminence
93	Jones County:	Beat 2, and the Precincts of West Jones, Mason School, 26th Street Fire Station, and Lamar School
94	Jones County:	Beat 3, and the Precincts of Sharon, Sandersville, City Barn, Maddox School, Stone Deavours School

95 Jones County: Beat 4, and the Precincts of Moselle, Pendorf, Pine Grove, Rainey, South Jones, and Shelton

96 Wayne County;

97 Wilkinson County;

Amite County: Beats 1, 2, and 3

98 Amite County: Beats 4 and 5
Pike County: Beats 4 and 5

99 Pike County: Beats 1, 2 and 3

100 Walthall County;

Jefferson Davis County: Beat 2;

Marion County: The Precincts of Goss, Morgantown, White Bluff, Stovall, and Kokomo

101 Marion County: Entire County except the Precincts of Goss, Morgantown, White Bluff, Stovall, and Kokomo

102 Lamar County;

Covington County: Beat 1, and the Precincts of Richmond and Sanford

103 Forrest County: The Precincts of Lillie Burney, Woodley School, Jones School, Petal High, East Bowie, Petal-Harvey, Camp School, and Hawkins Junior High

104 Forrest County: The Precincts of Blair High, Eatonville, Glendale, Petal-Leeville, Rawls Springs, Macedonia, Davis School, Grace Christian, and Pinecrest

105 Forrest County: The Precincts of
Central School,
Dixie School,
Westside,
Eaton School,
Sunrise,
Walthall,
Dixie Park,
Rowan High,
William Carey,
and Thames

106 Forrest County: The Precincts of
Forrest County A.H.S.,
McCallum,
McLaurin,
Brooklyn,
Carnes, and
Maxie;

Pearl River County: The Precincts of
Poplarville East,
Poplarville West,
Byrd Line,
Hickory Grove,
Gum Pond,
Wolf River,
Oak Hill,
Hillsdale,
Fords Creek,
Buck Branch,
White Sand,
Mill Creek,
Derby,
Progress,
Silver Run,
Steep Hollow,
Savannah,
McNeill, and
Caesar;

Stone County: Beat 2

107 The Counties of Greene and Perry

108 Pearl River County: Beat 4, and the
Precincts of
Picayune I, II,
III, and V;
the Precincts of
Ozone, Carriere,
and Salem

109 George County;

Stone County: Beats 1, 3, 4, and 5

110 Hancock County;

111	Harrison County:	The Precincts of Biloxi Nos. 1-4, D'Iberville, North Bay, and White Plains
112	Harrison County:	The Precincts of Biloxi Nos. 5-7, 7A-8, Holly Hills, and Howard Creek
113	Harrison County:	The Precincts of Stonewall, West Handsboro, Biloxi Nos. 9-11, and East Handsboro
114	Harrison County:	The Precincts of Gulfport Nos. 7 and 12, New Hope, E & W Saucier, Gulfport No. 11, Advance, East Lyman, East Orange Grove, Peace, and Poplar Head
115	Harrison County:	The Precincts of Gulfport Nos. 4, 5, 6, 8, and 9, East and West Mississippi City, and East and West North Gulfport
116	Harrison County:	The Precincts of Gulfport Nos. 13 and 14, Gulfport Nos. 2, 3, and 10, Outside Long Beach, West Orange Grove, West Lyman, and Lizana
117	Harrison County:	The Precincts of Gulfport No. 1, East Pass Christian, West Pass Christian, East Long Beach, West Long Beach, Pineville, Delisle, Ladner, Vidalia, and Riceville

226-362 O - 76 - 10

118 Jackson County: Beat 1

119 Jackson County: Beat 2

120 Jackson County: Beat 3

121 Jackson County: Beat 4

122 Jackson County: Beat 5

7. Defendants shall order and direct special elections in House Districts 79 and 97 on a date to be specified by the Court. The Court shall refrain from setting dates for special legislative elections until time for an appeal has expired or until the Supreme Court shall have decided an appeal on the merits. The Court retains jurisdiction of the case for the purpose of setting dates for special elections as soon as one of the above alternatives shall have occurred.

8. Except as hereinabove set forth, all objections and motions for special elections filed by the private plaintiffs and the Department of Justice are denied.

9. All appropriate and legal costs of court are adjudged against defendants, for which judgment, when the amount is computed, will be entered against the State of Mississippi.

10. Plaintiffs' request for an award of attorney's fees is denied.

11. Fees to be allowed the special masters shall be taxed against the State of Mississippi, and the amount of such fees shall be determined after an evidentiary hearing on the reasonableness of such fees, for which jurisdiction is retained.

12. Except for the injunctive relief herein granted, and subject to the Court's retention of jurisdiction stated above, the complaint and amended complaints filed herein are dismissed.

ORDERED, ADJUDGED, AND DECREED on this the 17 day of November, 1976.

Jas. P. Coleman
UNITED STATES CIRCUIT JUDGE
For the Court, Composed of
Dan M. Russell, Jr. and
UNITED STATES DISTRICT JUDGE

Harold Cox
UNITED STATES DISTRICT JUDGE
(3 Judge District Court)

Approved as to form:

For the Private Plaintiffs:

Jack B. Parker
Attorney for Private Plaintiffs

For the United States, as Plaintiff-Intervenor:

Attorney for Plaintiff-Intervenor

For the Defendants:

R. F. Sumner
Attorney for Defendants

APPENDIX E

SOUTHERN DISTRICT OF MISSISSIPPI
FILED
DEC 21 1976
HARVEY G. HENDERSON CLERK
DEPUTY
BY

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI

PEGGY J. CONNOR, et al.,

Plaintiffs,

- vs -

CIVIL ACTION NO. 3830(A)

CLIFF FINCH, et al.,

Defendants

Before COLEMAN, Circuit Judge; RUSSELL, Chief District Judge; and COX, District Judge.

ORDER AMENDING PREVIOUS JUDGMENT

The Court has before it, and has fully considered, plaintiffs' objections and motion to alter or amend judgment dated November 29, 1976. We also have before us, and have considered, the analysis of those objections by our Special Master, dated December 8, 1976.

Pursuant thereunto, it is

ORDERED, ADJUDGED and DECREED that our previous judgments in this legislative reapportionment case are hereby amended to read, for the legislative districts indicated, as follows:

Mississippi State Senate

Senate Dist. No.		Unit Population	District Population	Variance
28	Madison County	29,737		
	Holmes County: Beats 2 & 3	9,387		
	Yazoo County: The precincts of Benton, Deasonville, Fugates, Eden, Free Run, East Midway, West Midway, Harttown, Carter, & Dover in whatever Beats situated	6,671	45,795	+7.4%
29	Issaquena County	2,737		
	Sharkey County	8,937		
	Holmes County: Beats 1, 4, & 5	13,733		
	Yazoo County: All precincts in whatever Beats situated that are not included in District 28	20,633	46,040	+8.0%

Mississippi State House of Representatives

House Dist. No.		Population	Black Population	% Black	Variance
15	Coahoma County: Beat 2; & the Clarksdale precincts in Beats 1 & 3; & Cagle Crossing precinct in Beat 4; & Bobo, Rena Lara & Roundaway precincts in Beat 5	17,260			-5.91
16	Coahoma County: Mattson precinct in Beat 3; & the Clarksdale precincts in Beats 4 & 5	16,882			-7.1

House Dist. No.		Population	Black Population	% Black	Variance
47	Sharkey County	8,937	5,784	64.7	
	Humphreys County: Beat 5; & Silver City precinct in Beat 3	4,307	3,350	77.8	
	Yazoo County: Precincts of Carter, Lake City, Eden, Free Run, East Midway, West Midway, & Harttown in whatever Beats situated	3,120	2,060	66.0	
	TOTALS	16,363	11,194	68.4	-9.9%
48	Humphreys County: Beats 1, 2 & 4; & Lake City precinct in Beat 3	10,295	6,110	59.3	
	Holmes County: Precincts of Coxburg, Tchula, Thornton, & Cruger	6,258	4,625	73.9	
	TOTALS	16,553	10,735	64.9	-8.9%
49	Holmes County: The entire county less the precincts of Coxburg, Tchula, Thornton, & Cruger	16,862	11,118	65.9	-7.2%
53	Warren County: The precincts of Redbone, Yokena, Jett, Fire Station No. 7, American Legion(Blackburn), & St. Aloysius in whatever Beats situated	16,968	7,207	42.5	-6.6%
54	Warren County: The precincts of Culkin, Beechwood, Jonestown, Kings, Cedar Grove, Auditorium, & Central Fire Station in whatever Beats situated	17,559	7,348	41.8	-3.4%

House Dist. No.		Population	Black Population	% Black	Variance
55	Warren County: The precincts of Oak Ridge, Bovina, Redwood, Walters, Brunswick, Tingle, & Goodrum in whatever Beats situated	10,454	3,800	36.3	
	Yazoo County: The precincts of Dover, East Bentonia, West Bentonia, Mechanicsburg, Phoenix, Satartia, Deasonville, Fugates, Valley, Enola, Fairview, & Holly Bluff in whatever Beats situated	6,929	3,799	54.8	
	TOTALS	17,383	7,599	43.7	-4.3%
56	Yazoo County: The precincts of Center Ridge, Robinette, Zion, East Courthouse, West Courthouse, South City Hall, North City Hall, West Lintonia, East Lintonia, & Benton in whatever Beats situated	17,255	8,720	50.5	-5.9%

From the evidence already heard and considered in this case, the remaining objections filed by the plaintiffs are found to be without merit and will be overruled.

So ORDERED this the 17 day of December, 1976.

Jas. P. Coleman
UNITED STATES CIRCUIT JUDGE

Dan M. Russell Jr.
CHIEF UNITED STATES DISTRICT JUDGE

Harold Cox
UNITED STATES DISTRICT JUDGE

APPENDIX F

42 U.S.C. 1971 (a)(1) and (c) provide:

(a)(1) All citizens of the United States who are otherwise qualified by law to vote at any election by the people in any State, Territory, district, county, city, parish, township, school district, municipality, or other territorial subdivision, shall be entitled and allowed to vote at all such elections, without distinction of race, color, or previous condition of servitude; any constitution, law, custom, usage, or regulation of any State or Territory, or by or under its authority, to the contrary notwithstanding.

* * * * *

(c) Whenever any person has engaged or there are reasonable grounds to believe that any person is about to engage in any act or practice which would deprive any other person of any right or privilege secured by subsection (a) or (b) of this section, the Attorney General may institute for the United States, or in the name of the United States, a civil action or other proper proceeding for preventive relief, including an application for a permanent or temporary injunction, restraining order, or other order. If in any such proceeding literacy is a relevant fact there shall be a rebuttable presumption that any person who has not been adjudged an incompetent and who has completed the sixth grade in a public school in, or a private school accredited by, any State or territory, the District of Columbia, or the Commonwealth of Puerto Rico where instruction is carried on predominantly in the English language, possesses sufficient literacy, comprehension, and intelligence to vote in any election. In any proceeding hereunder the United States shall be liable for costs the same as a private person. Whenever, in a proceeding instituted under this subsection any official of a State or subdivision thereof is alleged to have committed any act or practice constituting a deprivation of any right or privilege secured by subsection (a) of this section, the act or practice shall also be deemed that of the State and the State may be joined as a party defendant and, if, prior to the institution of such proceeding, such official has resigned or has been relieved of his office and no successor has assumed such office, the proceeding may be instituted against the State.

42 U.S.C. (Supp. V) 1973 provides:

No voting qualification or prerequisite to voting, or standard, practice, or procedure shall be imposed or applied by any State or political subdivision to deny or abridge the right of any citizen of the United States to vote on account of race or color, or in contravention of the guarantees set forth in section 1973b(f)(2) of this title.

42 U.S.C. 1973j(d) provides:

(d) Whenever any person has engaged or there are reasonable grounds to believe that any person is about to engage in any act or practice prohibited by section 1973, 1973a, 1973b, 1973c, 1973e, 1973h, 1973i, or subsection (b) of this section, the Attorney General may institute for the United States, or in the name of the United States, an action for preventive relief, including an application for a temporary or permanent injunction, restraining order, or other order, and including an order directed to the State and State or local election officials to require them (1) to permit persons listed under this subchapter to vote and (2) to count such votes.

42 U.S.C. (Supp. V) 2000h–2 provides:

Whenever an action has been commenced in any court of the United States seeking relief from the denial of equal protection of the laws under the fourteenth amendment to the Constitution on account of race, color, religion, sex or national origin, the Attorney General for or in the name of the United States may intervene in such action upon timely application if the Attorney General certifies that the case is of general public importance. In such action the United States shall be entitled to the same relief as if it had instituted the action.

APPENDIX G

SOUTHERN DISTRICT OF MISSISSIPPI
FILED
DEC 28 1976
HARVEY G. HENDERSON, CLERK
DEPUTY
BY

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

PEGGY J. CONNOR, et al. — PLAINTIFFS

and

UNITED STATES OF AMERICA — PLAINTIFF-INTERVENOR

v.

CIVIL ACTION
NO. 3830(A)

CLIFF FINCH, et al. — DEFENDANTS

NOTICE OF APPEAL

Please take notice that the United States of America, Plaintiff-Intervenor in this action, hereby appeals to the United States Supreme Court the Final Judgment of the Three-Judge District Court entered on November 18, 1976, as amended by Order of that court entered on December 21, 1976. The appeal is taken pursuant to 28 U.S.C. Section 1253.

UNITED STATES OF AMERICA

Robert E. Hauberg
ROBERT E. HAUBERG
United States Attorney

CERTIFICATE OF SERVICE

I, the undersigned, Robert E. Hauberg, United States Attorney, hereby certify that I have this day mailed, postage

prepaid, a true copy of the foregoing Notice of Appeal to the following:

Honorable A. F. Summer
Attorney General
State of Mississippi
Post Office Box 220
Jackson, Mississippi 39205

Frank R. Parker, Esquire
Lawyers Committee for Civil
Rights Under Law
233 North Farish Street
Jackson, Mississippi 39201

This 28th day of December, 1976.

ROBERT E. HAUBERG
United States Attorney

U. S. GOVERNMENT PRINTING OFFICE : 1976 O - 226-362